

For Optimal Regulatory Outcomes, Carriers Should Foster a Culture of Regulatory Awareness and Responsibility

Air carriers operating (or seeking to operate) to, or in, the United States face a host of complex regulatory requirements from several federal government agencies including the Department of Transportation (“DOT”), the Federal Aviation Administration (“FAA”), the Transportation Security Administration (“TSA”), Customs and Border Protection (“CBP”), and the Animal Plant and Health Inspection Service (“APHIS”). With several decades of combined experience in advising both U.S. and foreign carriers, we have had a unique opportunity to view carrier operations from “the inside” and offer some observations about how carriers can foster a culture of regulatory awareness, responsibility, and “ownership.”

Regulations: Not Just for Lawyers

Carriers are in the business of transporting passengers and cargo safely to their destinations. Carrier employees and contractors (for brevity’s sake, when we refer to “employees” in this article, we include contractors) typically have discrete tasks, or areas of responsibility, that contribute to running complex enterprises like airlines. The rightful focus on safety and passenger satisfaction can sometimes overtake regulatory nuances or responsibilities. Therefore, in such a highly regulated industry, employees should also receive training appropriate to their tasks and responsibilities about federal regulations impacting their work and the consequences of non-compliance.



The firm’s practice encompasses virtually every aspect of aviation law, including advising domestic and foreign airlines on compliance with US agency regulations and policies concerning air carrier operations and consumer protection. For further information regarding the matters discussed in this article, please contact any of the following attorneys:

David M. Endersbee
(202) 973-7935
endersbee@kmazuckert.com

Barbara M. Marrin
(202) 973-7961
bmarrin@kmazuckert.com

Philip R. Weissman
(212) 991-5927
pweissman@kmazuckert.com

KMA Zuckert LLP
888 17th Street, NW, Suite 620
Washington, D.C. 20006
Telephone: (202) 298-8660
Fax: (202) 342-0683
www.kmazuckert.com

This document has been prepared by KMA Zuckert LLP to inform its clients and other parties of legal developments of interest. The views expressed herein do not constitute legal opinion or advice and should not be used as such.

For Optimal Regulatory Outcomes, Carriers Should Foster a Culture of Regulatory Awareness and Responsibility (March 2025)

Page 2 of 3

How carriers organize themselves and train employees differentiates carriers that experience successful regulatory outcomes from carriers that don't.

An important commonality we have observed in working with numerous carriers is that carriers with personnel who (i) understand (even in general terms) regulations applicable to their tasks/area of responsibility and (ii) take ownership of issues under their area(s) of responsibility achieve better compliance overall and more optimal outcomes in enforcement matters and investigations. On the other hand, carriers who tend to rely on counsel (in-house or outside) to “swoop in” and impose a solution after a problem has been identified, or after enforcement action or investigation has begun, don't fare nearly as well. In other words, a proactive approach to regulatory compliance is the ideal path to avoid regulatory sanctions.

What does this mean in practice? Carriers with a strong commitment to regulatory compliance *and awareness* make sure employees are aware of regulations applicable to their bailiwick *before* an issue arises. “Aware” may mean anything from a thorough understanding (for senior managers) to a working knowledge suitable for the employee's role (*i.e.*, knowledge enough to know when they need to ask a supervisor about possible changes in company policy, issues relating to current operations, new aircraft orders, etc.) “Aware” also means that they understand the consequences of noncompliance, including potential civil penalties, reputational damage, and the impact of enforcement on future cases (*i.e.*, many agencies view past offenses for the same or similar conduct as an aggravating factor in calculating civil penalties). Employees should be encouraged and incentivized to report their concerns about compliance to their managers for action.

Another important commonality we have observed in carriers with a strong compliance background is what we call “regulatory ownership.” This means that key personnel clearly “own” specific subject matter and are responsible for (i) identifying and reporting potential compliance issues and (ii) responding to enforcement activity/investigations, including marshaling and organizing the internal resources necessary to do so. These arrangements help ensure both a positive compliance disposition and an efficient and organized response when the carrier is subject to enforcement or an investigation.

Training for Consequences

Airline employees are all laser-focused on safety because the consequences in this industry can be stark. Carriers with a strong compliance disposition also train their employees to be aware of enforcement consequences. Typically, federal agency enforcement results in civil penalties, which is a result that is easy to understand. However, employees should also be aware of other consequences. Typically, agencies impose higher penalties for the same, repeated violative conduct, particularly if it occurs within a short period of time because (from a regulator's perspective) the carrier has not “learned their lesson.” Employees trained to understand these consequences will be more motivated to anticipate and report potential regulatory concerns, and carriers are

For Optimal Regulatory Outcomes, Carriers Should Foster a Culture of Regulatory Awareness and Responsibility (March 2025)

Page 3 of 3

well advised to establish “chains of command” so that issues can be identified quickly and receive appropriate assessment from management and legal departments.

“It’s Just a Letter”

A related subject we have repeatedly observed over the years is carriers mishandling communications from agencies. Such mishandling can result in missed deadlines for responses to agency penalty notices or investigations (and what is, in effect, a default decision by the agency), creating avoidable regulatory issues, and additional work when outside counsel is involved. Carriers are well advised to train employees handling mail/express deliveries to prioritize such communications and ensure they are promptly forwarded to management and/or legal personnel as soon as possible.

Similarly, agencies conducting inspections may utilize agency personnel to pose questions to employees concerning company practices.¹ Employees should be advised to seek out a manager in such circumstances, and management personnel should, in turn, immediately contact their legal departments for guidance.

Ensure Multiple Personnel are “In the Loop”

Another common issue we see among carriers is that some carriers rely only on one employee to keep up to date on regulatory compliance, regulatory changes, and regulatory deadlines. Committing regulatory compliance matters to only one employee (particularly one who is not a legal professional) presents a host of problems. As noted above, letters and deadlines can be missed if the one employee is on leave. Centralizing regulatory matters also does not foster an environment of “ownership” of regulatory compliance among other employees, and creates a “knowledge vacuum” if the employee departs or assumes another role. Every employee, as appropriate to their duties, has a role in regulatory compliance. Ensuring that many employees are trained and aware of regulatory requirements will ensure that nothing is missed and will ensure continuity of compliance if employees leave the company.

Final Thoughts

Carrier employees are where the proverbial rubber hits the road in terms of regulatory compliance. Much of what they do is strictly dictated by regulations which are then “translated” into manuals and operating procedures. Experience and outcomes demonstrate that carriers that have (i) managers familiar with regulations and (ii) employees who are educated about how regulations impact their roles will both perform better and experience better outcomes in enforcement and investigations.

¹ See our related article touching on this subject, “Air Carriers and Shippers: Beware the Well Meaning Employee,” available at <https://www.kmazuckert.com/publications/aviation/Aviation-EndersbeeMarrin-AirCarriersAndShippers.pdf>.