



Advantages and Disadvantages of Becoming a Regulated Entity

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Introduction


Listed below are some of the issues that would arise if airline service companies become “regulated entities”.

Some points which, at first glance, seem disadvantageous, on closer inspection may actually be advantageous.



As service companies are already regulated by certain federal and state laws, as well as airport regulations and permits, for the purpose of this analysis, we define **Regulation** as...

The requirement of certification by a federal agency (i.e. FAA, TSA) before providing (or continuing to provide) any one or more of the services currently being performed by airline service companies.

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- These points are not intended to be a comprehensive list. This list does not purport to account for economic, business, or operational issues, but is merely for legal reference.
 - Whether certified or not, airline service companies are already regulated, since such companies may be governed by Minimum Standards at some airports, are regulated by airport permits and leases, by the requirement to obtain airport badges and customs seals, and by having to comply with regulations governing airlines.
 - In addition, OSHA and EPA regulations govern certain service company activities.



Certified companies have access to direct governmental security directives and other governmental information.

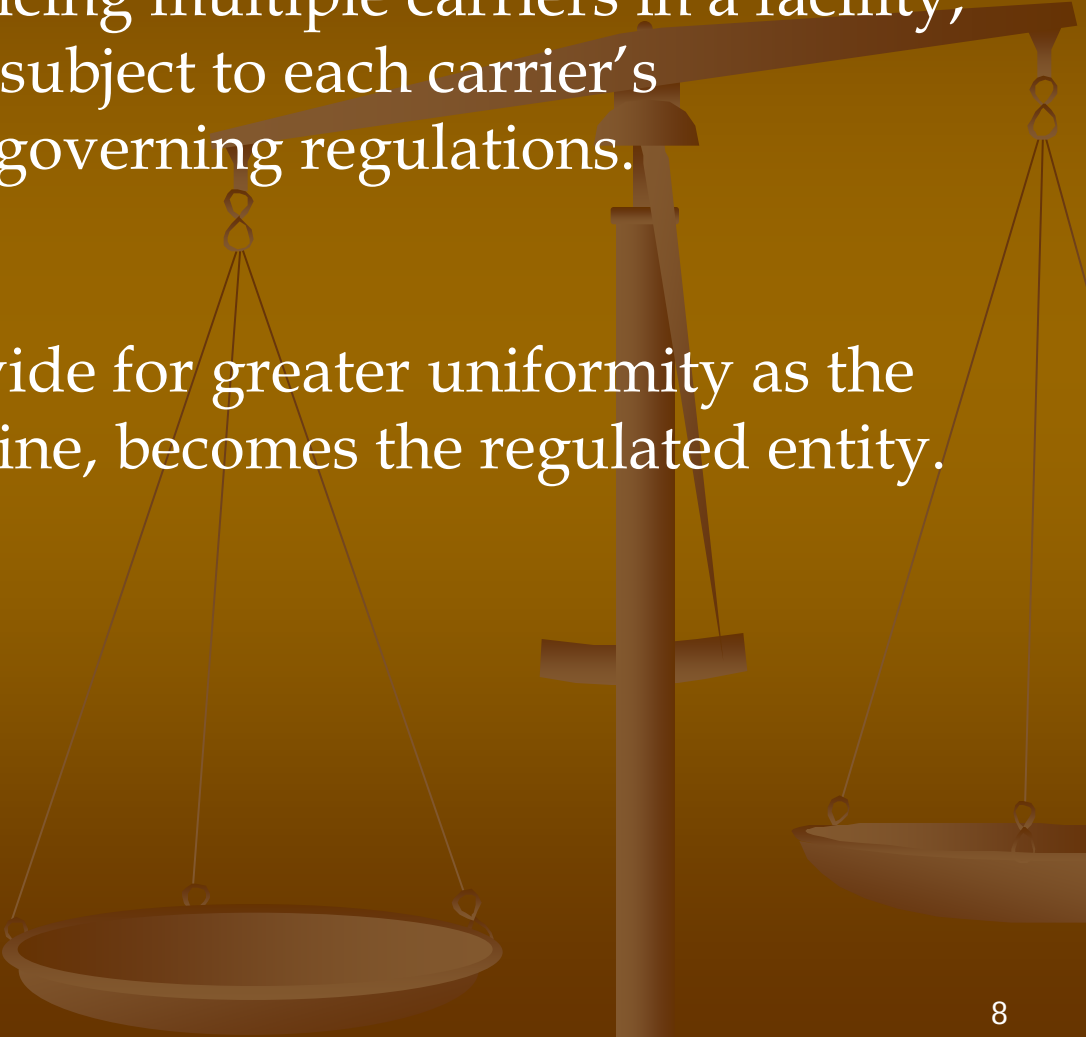
- While direct access to governmental security directives is important, providers may be able to gain access through other means such as airline customers or associations. There may be penalties for the unauthorized release of confidential information.

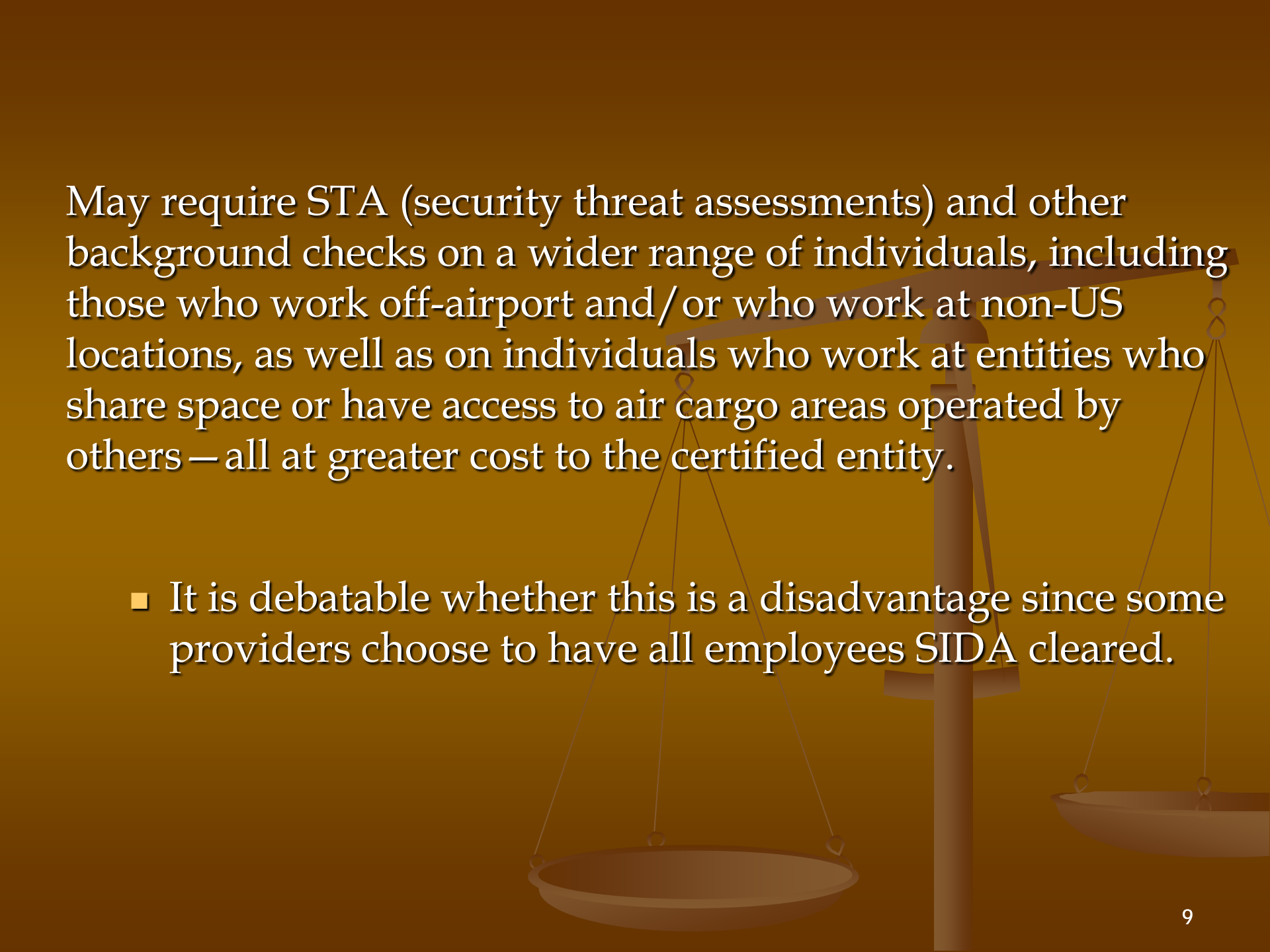
Regulation may allow airline service providers the ability to offer services that are now only provided by regulated entities.

- This is a valuable advantage. An excellent example is the CCSP program which allows an airline service company to become regulated for the purpose of inspecting cargo.
- By operating in a regulated environment, an airline service company will be required to spend time and incur certain costs, and assume additional insurance risks.
- However, revenue from providing additional services should offset any additional costs or risks, and compensate the airline service company for the time incurred.

If a regulated industry is permitted to help craft regulations, it can develop certain protections otherwise not available as a non-regulated entity.

- For example:** Under the Support Antiterrorism by Fostering Effective Technology Act (“the SAFETY Act”) 6 U.S.C. §§ 441-44 (2006) Certified Air Cargo Screeners, a certified Air Cargo Screener using Certified Equipment, receives certain protections relating to the use of the Certified Equipment, including:
- a) exclusive jurisdiction in federal court;
 - b) a liability cap in an amount no greater than the amount of insurance the DHS requires as a condition of certification; and
 - c) a bar on punitive damage awards.

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- Currently when servicing multiple carriers in a facility, the provider is often subject to each carrier's interpretation of the governing regulations.
 - Regulation may provide for greater uniformity as the provider, not the airline, becomes the regulated entity.



May require STA (security threat assessments) and other background checks on a wider range of individuals, including those who work off-airport and/or who work at non-US locations, as well as on individuals who work at entities who share space or have access to air cargo areas operated by others – all at greater cost to the certified entity.

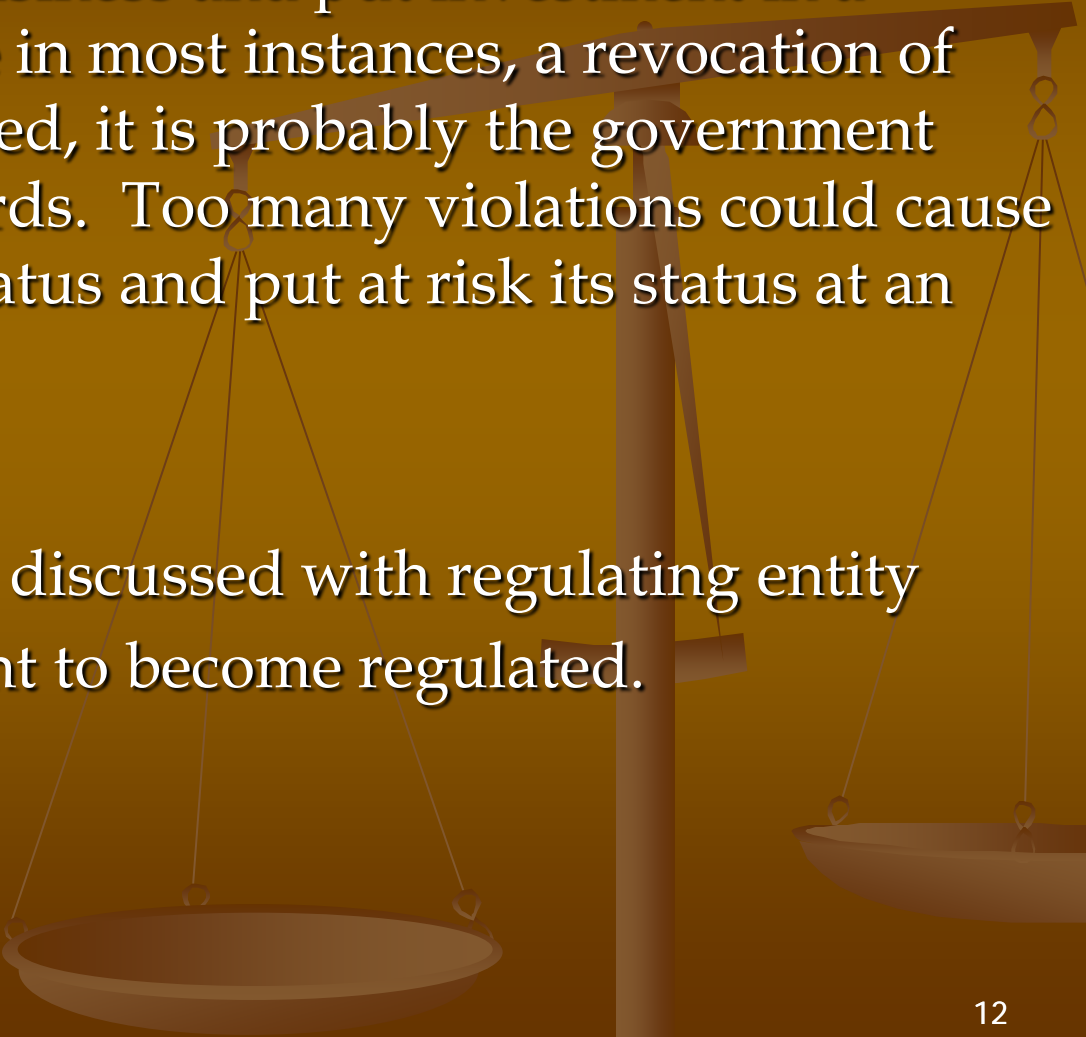
- It is debatable whether this is a disadvantage since some providers choose to have all employees SIDA cleared.

Vagueness and questions of interpretation raised by regulations.

- There is always a risk that individual states will draft regulations which are more restrictive or more oppressive than federal regulations resulting in a patchwork of inconsistent regulations. This can result in a lack of clarity.
- Compliance with regulations has become a way of life and an ordinary and an expected business expense. Even as non-regulated entities, airline service companies often comply with many of the same regulations as a regulated entity.

Compliance costs for mandatory certification will significantly increase the costs of compliance which may not be able to be passed onto customers.

- Cost/benefit analysis may show that extra income earned by providing additional services outweigh additional costs.



A loss of authority for whatever reason can have a devastating effect on business and put investment in a company at risk. While in most instances, a revocation of authority can be appealed, it is probably the government who will set the standards. Too many violations could cause a company to lose its status and put at risk its status at an airport or nationally.

- Penalties can be discussed with regulating entity before agreement to become regulated.

Risk of fines and penalties. These could be similar to TSA, CBP and OSHA fines which have increased over the years. Unintentional mistakes can lead to an undeserved reputation.

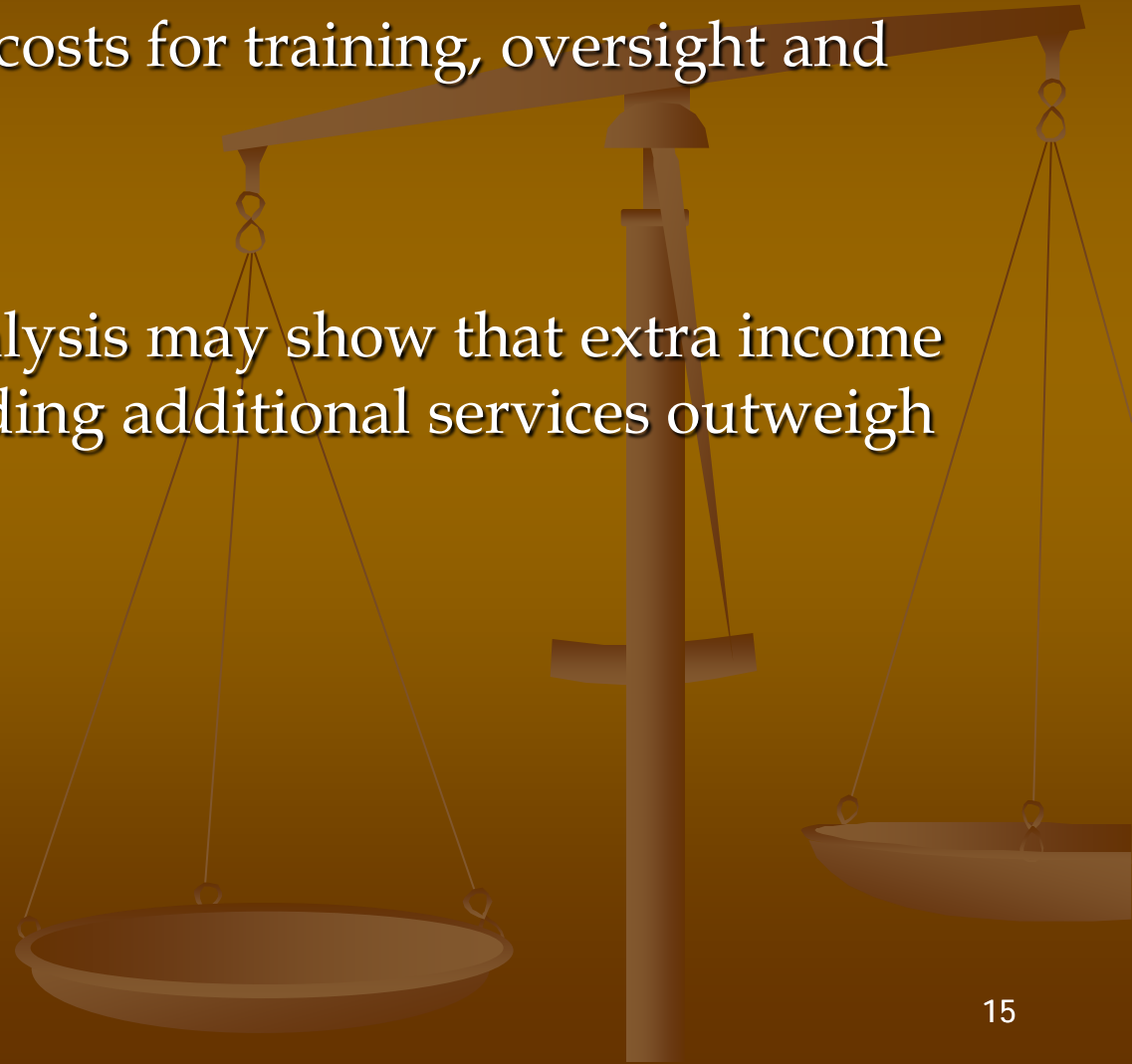
- These can be reduced by better management, negotiation and appeals.
- Often airlines do not contest or even try to reduce fines but simply pay the fines and demand reimbursement from the airline service company.
- Becoming regulated may allow a service provider a better opportunity to challenge or mitigate a fine or penalty.

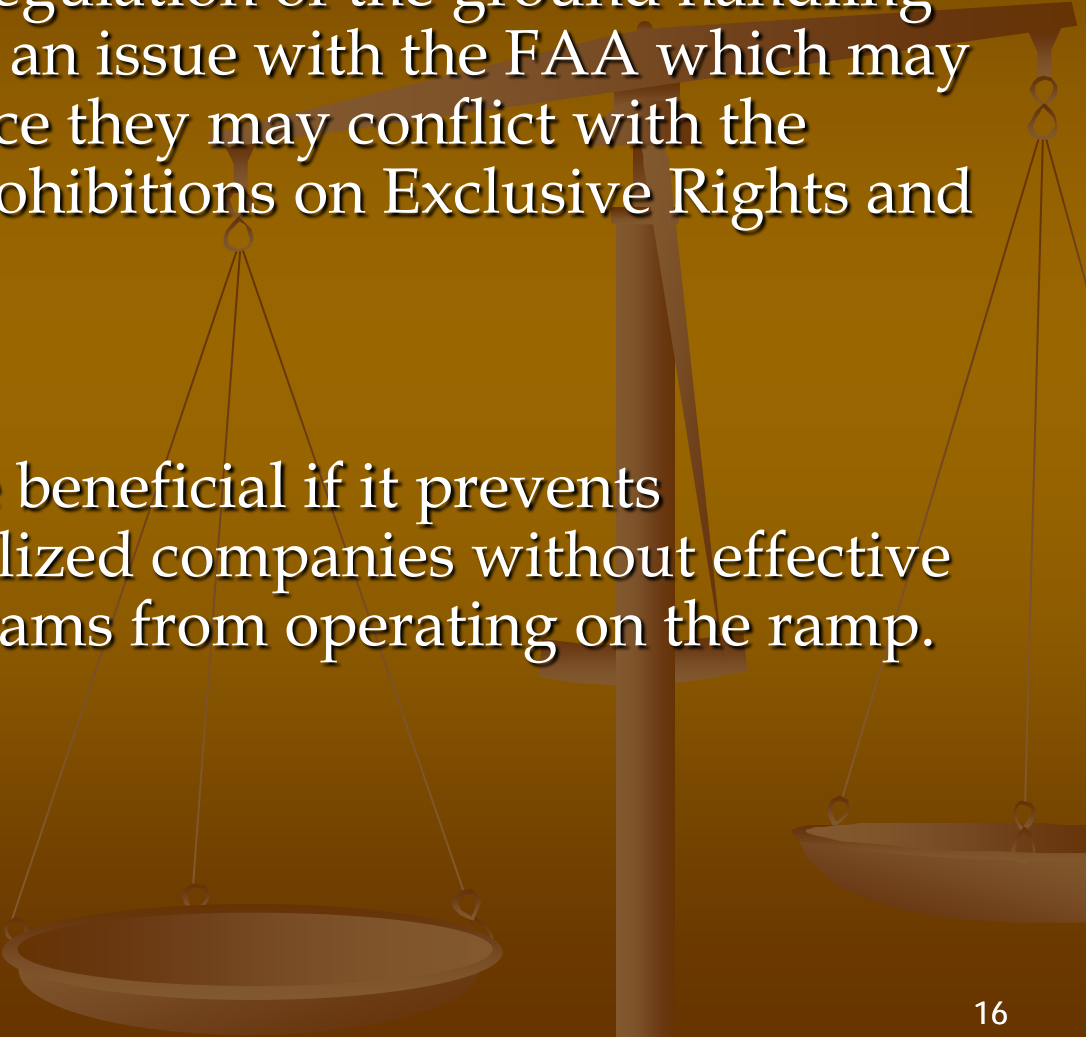
Increased costs in obtaining and maintaining authority.
These costs will not be reimbursable.

- The cost/benefit analysis may show that extra income earned by providing additional services outweigh additional costs. It is possible that as a regulated entity cargo handlers could pass on to airlines, terminal, screening and administrative fees in addition to per kilo charges.

Increased manpower costs for training, oversight and management.

- Cost/benefit analysis may show that extra income earned by providing additional services outweigh additional costs.





Small handlers would find it too expensive or difficult to become certified. The regulation of the ground handling industry could become an issue with the FAA which may oppose such efforts since they may conflict with the Sponsor Assurances prohibitions on Exclusive Rights and Unjust Discrimination.

- This may be beneficial if it prevents undercapitalized companies without effective safety programs from operating on the ramp.

Regulation could bar some previously authorized/badged employees from performing certain services.

- This could lead to certain labor issues if your company is unionized, or claims could be made that employees terminated or not hired, fall into a protected class.

Regulations that create certain standards and penalties for violating such standard often result in duplication as the private employer sets up internal procedures to make sure they are compliant. This has occurred in the trucking industry.

- Cost/benefit analysis may show that extra income earned by providing additional services outweigh additional costs.

Increased risk of lawsuits for negligent selection of subcontractors, negligent hiring or retention.

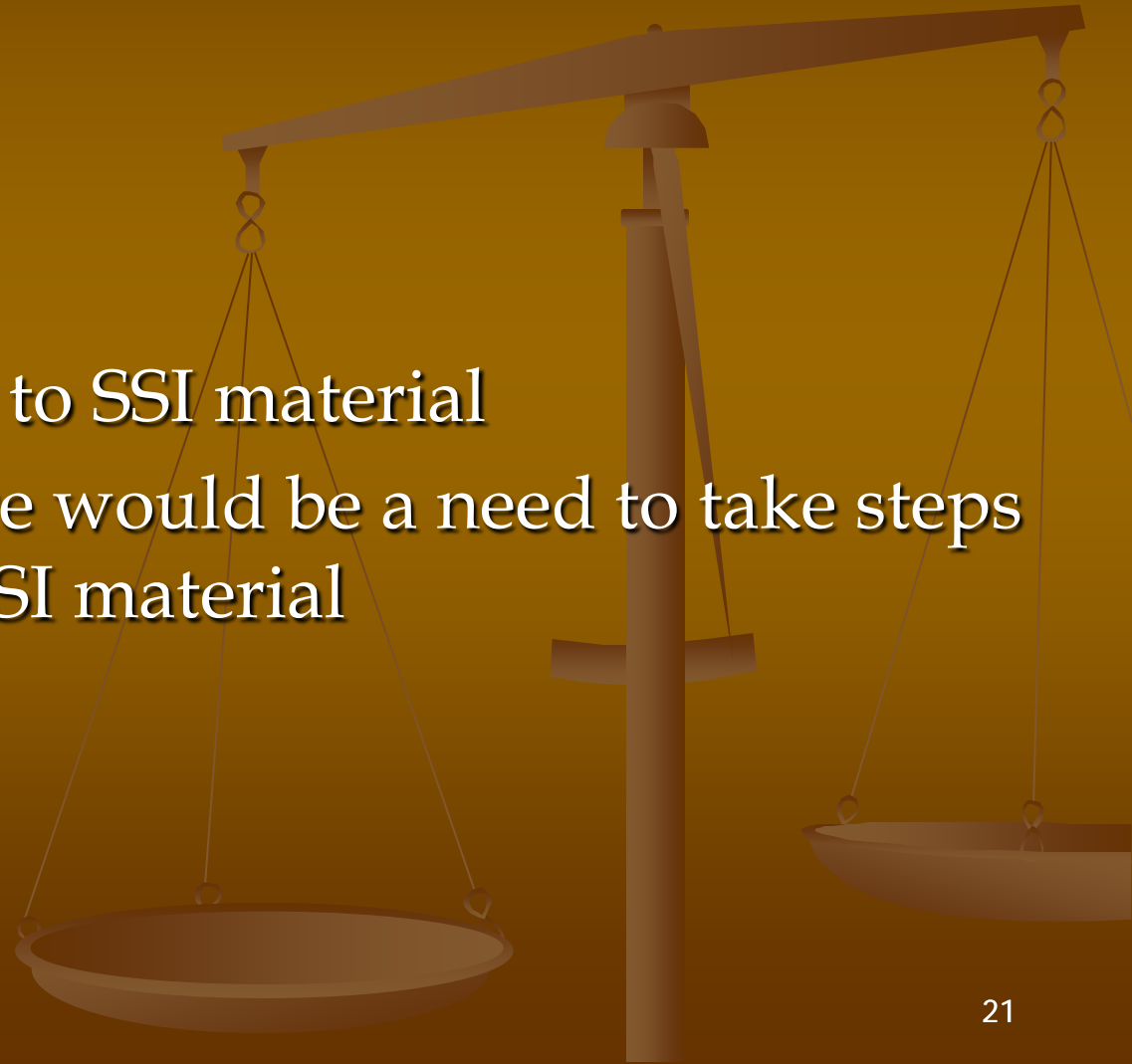
- The trucking industry found, however, that by taking extra steps in the subcontracting and recruitment process, there was less contractor theft and employee pilferage.

Model Security Plan

- If regulated, the TSA may impose additional obligations on the ground handling industry.
- Among other obligations, would the TSA require ground handlers to implement a Model Security Plan?

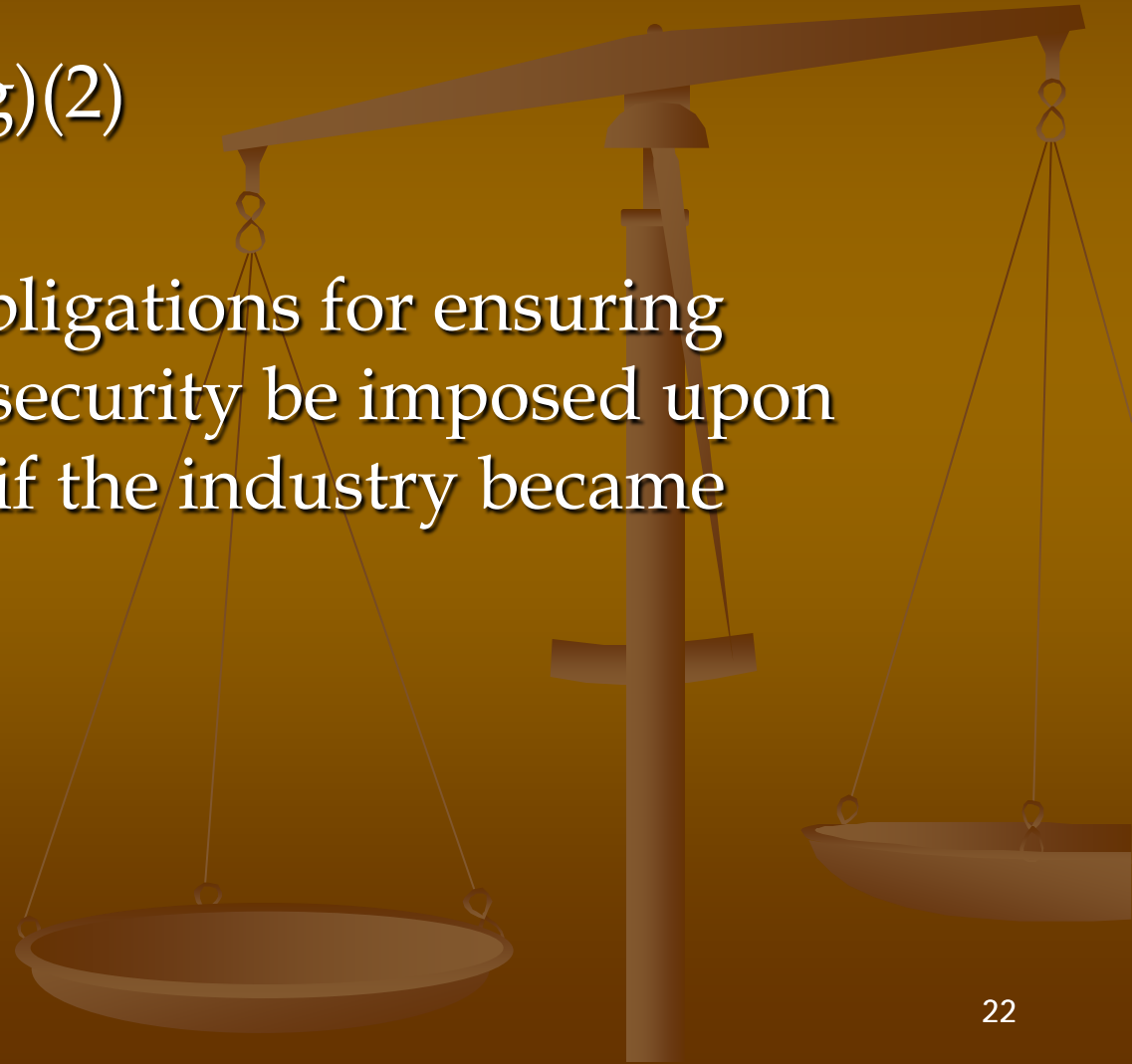
Sensitive Security Information

- 49 CFR § 1520.5
- If regulated :
 - Greater access to SSI material
 - However, there would be a need to take steps to safeguard SSI material



Perimeter Access Security

- 49 USC § 44903 (g)(2)
- Will additional obligations for ensuring perimeter access security be imposed upon ground handlers if the industry became regulated?



Pre-Screening

If regulated, the industry needs to make sure that additional pre-screening obligations are not imposed on passenger service agents.

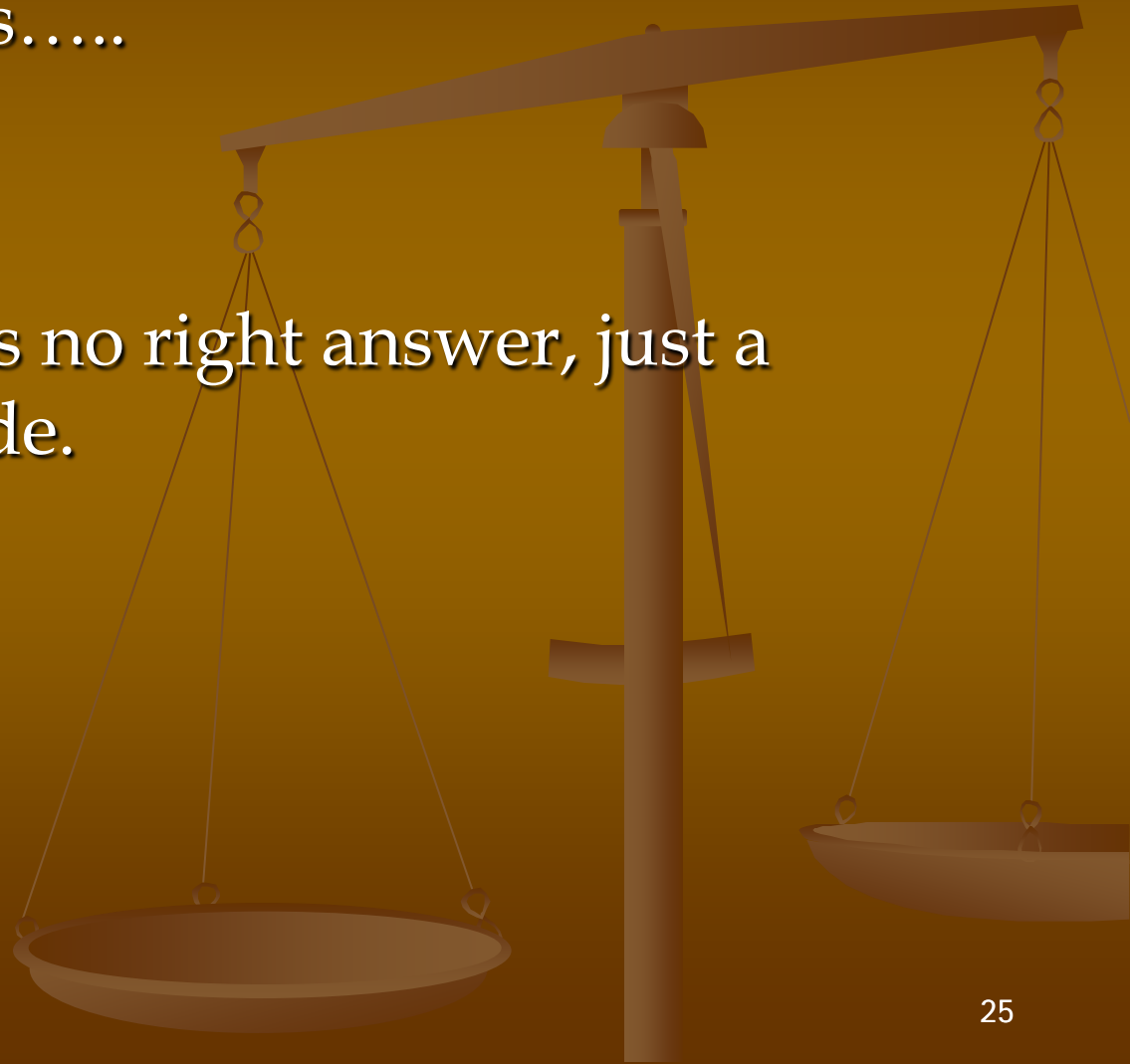


C-TPAT

- Program designed for airlines and indirect air carriers (freight forwarders and customs brokers) and others in the supply chain.
- Membership benefits include reduction in CBP inspections.
- If regulated, is this program applicable to cargo handlers?

The Answer?

- The Debate Begins.....
- Sometimes there is no right answer, just a decision to be made.



QUESTIONS?

