

Certification: the name of the game?

Is regulation right for the industry? Len Kirsch discusses the pros and cons of certification.

On July 28, most US ground handlers are meeting in Washington DC to decide whether it is in the industry's interest to become a regulated entity for the purposes of compliance with security regulations handed down by the Transportation Security Agency (the TSA). However, there may not be a right or a wrong answer, just a decision to be made.

There are advantages and disadvantages in having airline service companies becoming regulated entities. As service companies are already regulated by certain federal and state laws and airport regulations and permits, for the purposes of this article, we define "regulation" as the requirement of certification by a federal agency (the FAA or TSA), before providing (or continuing to provide) any one or more of the services currently being performed by airline service companies. 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, by airport 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 service company activities.

Becoming regulated does not mean that one should become or not become certified under the TSA's Certified Cargo Screening Program (the CCSP).

The advantages of certification

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

Analysis: 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 unauthorised release of confidential information.

2. Ability to offer services that ordinarily can be provided by only a regulated entity.

Analysis: This could be important if the provider is willing to take the insurance risk. However, with the CCSP programme, an airline service company may have the option of becoming a regulated entity separate and apart from its other operations. By operating in a regulated environment, it may be difficult or time-consuming for new entrants to earn the certification to enter and compete in the business. This may be the most valuable advantage.

The disadvantages of certification

1. Certification may require Security Threat Assessments and other background checks on a wider range of individuals, including those who work off-airport and/or those who work at non-US locations, as well as individuals who work at entities which share space or have access to air cargo areas operated by others. This would all be at the greater cost to the certified entity.

Analysis: This is an uncertain area: perhaps this is one issue that can be negotiated with the regulating entity.

2. Vagueness and questions of interpretation raised by the regulations.

Analysis: In answering, I would say that compliance with regulations has become a way of life and an ordinary and expected business expense.

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

Analysis: Cost/ benefits analysis may show that extra income earned by providing additional services outweigh additional costs.

4. 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 withdrawal 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 country-wide.

Analysis: Penalties can be discussed with the regulating entity before any agreement to become regulated.

5. 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.

Analysis: These can be reduced by better management and negotiations or appeals.

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

Analysis: Cost/ benefit analysis may show that extra income earned by providing additional services outweighs additional costs.

7. Increased manpower costs for training, oversight and management.

Analysis: Again, cost/ benefit analysis may show that extra income earned by providing additional services outweighs additional costs.

8. Small handlers may 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 these efforts since they may collide with the Sponsor Assurances prohibitions on Exclusive Rights and Unjust Discrimination.

Analysis: This may be beneficial if it prevents undercapitalised companies without effective safety programmes from operating on the ramp.

All things considered, this is a tough decision. If you have any thoughts on the above points, I should be happy to hear from you.

Please e-mail me at lkirsch@mklawnyc.com



McBreen & Kopko
500 North Broadway
Suite 129
Jericho, New York 11753
Tel. (516) 364-1095
Fax (516) 364-0612
Mobile (516) 318-5991
LKirsch@mklawnyc.com
www.mklawnyc.com