

**qrulepubliccomments**

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**From:** Paul Ruden [PRuden@astahq.com]  
**Sent:** Wednesday, March 01, 2006 2:48 PM  
**To:** qrulepubliccomments  
**Subject:** American Society of Travel Agents Comments in RIN 0920-AA03  
**Attachments:** Communicable Diseases NPRM Comments Final.pdf

The attached COMMENTS OF THE AMERICAN SOCIETY OF TRAVEL AGENTS, INC. in Docket RIN 0920-AA03 are submitted pursuant to the Notice of Proposed Rulemaking published in 70 Fed. Reg. 71892 (November 30, 2005). The original due date was extended to March 1, 2006 in 71 Fed. Reg. 4544, January 27, 2006. We would appreciate your e-mail confirmation that you have received this message. Thank you.

If there are any questions related to this filing, please communicate directly with me. <<Communicable Diseases NPRM Comments Final.pdf>>

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**BEFORE THE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
WASHINGTON, D.C.**

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**CONTROL OF COMMUNICABLE DISEASES** ) **RIN 0920—AA03**  
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**COMMENTS OF THE  
AMERICAN SOCIETY OF TRAVEL AGENTS, INC.**

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March 1, 2006

**BEFORE THE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
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**CONTROL OF COMMUNICABLE DISEASES**  
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**RIN 0920—AA03**

**COMMENTS OF THE  
AMERICAN SOCIETY OF TRAVEL AGENTS, INC.**

The American Society of Travel Agents, Inc. (ASTA) submits these comments in response to the Notice of Proposed Rulemaking (NPRM) issued by the Department of Health and Human Services in the referenced proceeding. 70 Fed. Reg. 71892 (November 30, 2005).

ASTA is the world’s largest association of professional travel agencies. Its membership includes travel agency companies of the traditional, on-line and hybrid varieties, as well as individual travel agents and many others engaged in aspects of retail and wholesale distribution of transportation services.

**I. SUMMARY OF POSITION**

ASTA supports the objectives of the rulemaking insofar as it seeks to create a faster and more reliable process for reacting to a health crisis where the spread of disease is directly connected to travel. We believe it is clear that existing approaches to after-the-fact data collection using existing resources may not be sufficient in the face of a pandemic spreading rapidly across the globe by infected travelers. We are anxious to work with HHS and CDC to achieve the reasonably attainable goals of the rulemaking before we actually face a pandemic. We have already established a communications link with CDC to obtain directly the latest available information about developing crisis medical issues affecting travel.

At the same time the proposals in the NPRM do not arise in a vacuum. The threat of terrorism has led the federal government, appropriately, to examine new data collection opportunities that, if implemented as roughly outlined by the Transportation Security Administration, will have potentially large impacts on industry methods of operation and industry costs. In fact, the travel industry is and likely will remain one of the largest collectors of personal data about travel consumers.

ASTA believes strongly that the interests of the country as well as our industry require the government to coordinate data collection requirements. The reasons are many. Coordination of the many federal collection rules will improve compliance while reducing the costs (independent of who bears them). It will also reduce the opportunities for error while providing reliable data across all agencies that require it in the public interest. Finally, a coordinated collection system will make it easier to protect the privacy interests of the individuals who are called upon to give the government, through our industry, significant personal information.

Some of the data systems, such as APIS, are already well-established and others, such as Secure Flight, continue to struggle. This makes it all the more important that the travel industry not be presented with what amount, in practical terms, to random requirements to collect, store and transmit personal information about travelers.

Moreover, as the NPRM acknowledges, the data collection requirements in this proceeding, standing alone, will impose substantial costs on travel agents, among others. Yet the need for this data is not a travel need; it is a public health need affecting everyone. It is not reasonable, therefore, to impose still another uncompensated data collection obligation on the industry when the benefits of the process benefit everyone. Sound policy would require that the costs be borne by everyone, not just those charged with the collection obligation. If it is

impossible to develop a workable compensation scheme, then every effort should be made to reduce the costs to the absolute minimum, particularly where the consumer can freely refuse the request for the information without personal consequences and the industry that is chosen to bear the brunt of the costs (particularly under the Point-of- Sale approach) is a small business industry already beset with massive financial burdens arising from airline channel discrimination policies.

There are, moreover, specific issues with the way in which the current rule is fashioned, including, in particular, the requirement to limit the use of the data collected. Most of the data called for is already routinely collected by travel agents from their clients and some of the rest is frequently sought. While we understand the general principle that the government needs to limit the commercial use of data collected for public health purposes, the government cannot, by requiring this information be turned over to the government, limit the commercial uses of the data. This portion of the proposed rule should be abandoned.

Finally, the government should fund a national communications strategy and program to inform consumers about the nature of the new data collection requirements. This will lift some of the cost burden from travel agents who otherwise will spend a lot of valuable time, far more than forecast by the NPRM, in explaining to clients what they are asked to produce personal information that is not-essential to their travel arrangements.

## **II. TRAVEL AGENTS ALREADY COLLECT SOME OF THE INFORMATION CALLED FOR BY THE PROPOSED RULES.**

ASTA's comments are presented in the context of existing travel agency operations. Understanding of this context is essential to fashioning a workable regulation. Some of the context is obvious but some is not.

Clearly every air travel reservation produced by a travel agency has a passenger name, flight information, passport information (international flights only and only if available at time of

reservation and usually only if required by the airline) and return flight information (when applicable and booked at the same time). They will also know the names of travel companions if they are on the same Passenger Name Record or formal group ticket, but there are many cases in which people traveling together are booked separately through different channels and the agent will not then know who the traveling companions are.

Sometimes travel agents also collect emergency contact information, e-mail addresses, home addresses and phone number contact information. Agents seek this information for several reasons. The most important is customer service. If something about the reservation changes, the travel agent must be able to communicate with the passenger. Some of the information is also used to compile passenger profiles that facilitate the traveler's next reservations experience with the agency. And some of it is used to inform consumers about other travel opportunities, subject, of course, to federal and state laws governing commercial e-mails and faxes.

The foregoing does not mean, however, that from a travel agency perspective, the issues presented by the proposed rules relate only to the information described in the second group. The format of the data is also important.

For example, one of the significant advances made in discussions with TSA about Secure Flight was that the "legal name" TSA wanted in reservations records was agreed to be the "name that the person will have on the government identification to be produced at the airport." This seemingly simple principle will, if Secure Flight ever comes to pass, avoid many errors and will facilitate the passage of travelers through the airports even as the security net draws tighter.

The Communicable Disease rule proposal also calls for the passenger's name, but it says "Full name (first, last, middle initial, suffix)."<sup>1</sup> This is not the same requirement as Secure Flight will use. As a practical matter, it is impossible for a travel agent to enter two different passenger

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<sup>1</sup> Proposed sec. 71.10(e)(1). See 70 Fed. Reg. 71940.

names in the same Passenger Name Record for one traveler. If the government does not coordinate these requirements, compliance with one or the other rule will be conflicted, unpredictable and counter-productive.

### **III. FEDERAL GOVERNMENT DATA COLLECTION REQUIREMENTS SHOULD BE COORDINATED.**

There can be no dispute that the “major impacts of this rule will fall on ... travel agencies” (among others).<sup>2</sup> The NPRM states that the imposition of these costs, which are substantial,<sup>3</sup> on a select group of private businesses is justified by the public benefit of “avoidance of public health and economic costs associated with infectious disease outbreaks spread via travel.”<sup>4</sup> Whether intended to or not, this principle in effect imputes some special burden of ultimate responsibility for containing outbreaks upon those engaged in facilitating and producing travel. Through the proposed rules, the government is demanding that the travel industry work for it and bear the cost. Perhaps the theory is that eventually those increased costs will be passed on to all travelers in the form of higher prices and the marketplace will then have solved the problem of the government’s refusal to consider means of compensating the incremental costs and recovering those costs through taxes on the entire population that will benefit from the rules.

We do not bring up this point of social/political philosophy in the expectation that the government is now going to rush through legislation to compensate the travel industry for this new burden, though doing that would be better than effectively taking industry resources with the hope that somehow the costs will be recovered from travelers. Rather the point is that, given the nature of the burden being imposed, every effort should be made to reduce the burden

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<sup>2</sup> 70 Fed. Reg. 71913.

<sup>3</sup> NPRM Table VI.F—3A at 70 Fed. Reg. 71918.

<sup>4</sup> 70 Fed. Reg. 71913.

consistent with the need to manage pandemic outbreaks. ASTA cannot dispute the CDC's findings that alternative means of collecting data will not suffice to address the potential health crisis. But if the travel industry is to be called upon again to adopt special practices and expend financial resources to help manage such a situation, the least that the government can do is coordinate the data collection demands it makes into a single collection regime. This is especially true where the consumer may, without consequence, simply refuse to provide the information requested, resulting potentially in a huge expenditure of resources that misses the goal completely.

Airlines and GDSs will speak for themselves here, but travel agencies have suffered massive economic impacts since the first commission caps were imposed in 1995. The number of operating agencies has been reduced by 41 % since 1995 and net exit is continuing. Travel agents can ill afford any increase in their costs, regardless of the merit of the cause.

Travel agents are willing to do their part in securing the safety of travel consumers and in helping the country, indeed the world, contain the spread of deadly diseases that could kill millions. But the government also must take its share of responsibility to avoid imposing duplicative and variable collection and reporting requirements for different programs. ASTA's first point, therefore, is to ask that the various government agencies involved in these collection efforts get together, right now, and develop a single protocol for collection, storage and reporting of travel information.

ASTA has been trying, with some success, to work with the Transportation Security Administration to obtain rational and workable operating requirements in the Secure Flight program, should it eventuate. This is more than just a question of economic fairness or efficiency. One key goal of data collection policy should be to reduce the circumstances likely to

induce errors to an absolute minimum, given the potential consequences if a terrorist or infected individual escapes the screens we are erecting. The use of multiple regimes for data collection will increase the likelihood of error in data collection, in addition to duplicating effort and creating the possibility of conflicting records about the same travel event.

A good example of the potential benefits of coordination is the understanding reached with TSA regarding the “passenger name” to be included in reservations under the Secure Flight program discussed earlier. There are no doubt other examples where coordination would facilitate the data collection process and serve the salutary purposes of both rules.

ASTA is prepared, indeed anxious, to sit down with representatives of the relevant government agencies to help create a rational data collection regime that will meet the country’s physical safety needs as to both terrorism and public health.

#### **IV. ALL THINGS CONSIDERED, REQUIRING DATA COLLECTION INITIALLY AT POINT OF SALE MAKES THE MOST SENSE.**

While we believe that the cost impacts of the proposed rules are understated, primarily because of the amount of time required to explain the rules to puzzled consumers and the time and cost of changing customer service profiles maintained on many agency customers, the fact remains that under any plausible regime, the costs of the Point-of-Sale (POS) approach are dramatically less than the costs of Point-of-Departure (POD) collection. In addition, ASTA is very concerned about the potential for additional delays at the airport, the perception of which could overwhelm the progress made to date in screening procedures and deter many people from traveling by air at all.

ASTA also believes that to the extent possible the rules should be channel-neutral, treating all passengers in a parallel and largely identical manner. This principle means that passengers dealing with airlines directly and passengers dealing with travel agents should have

essentially the same experience under these regulations. If all data is collected at POD, airline passengers, having already provided the information to the airline at time of reservation, would have a facilitation advantage over passengers who dealt with a travel agent and provided none of the relevant incremental information, thus being forced to do so upon arrival at the airport. The way to avoid this problem is the POS scenario.

Airlines would be free, of course, to ask a second time for information that was initially refused to the agent and thus does not appear in the Passenger Name Record, but this process would be more efficient and transparent to most passengers than requiring every travel agency passenger, which are still the majority of the total traffic, to produce the information at the airport.

#### **V. PROPOSED SECTION 71.10(h) SHOULD NOT BE ADOPTED.**

Section 71.10(h) of the proposed rules states

“Information collected solely in order to comply with this regulation may only be used for the purposes for which it is collected.”<sup>5</sup>

The problem is the word “solely” since very little of the data to be collected under the rule is collected “solely” because of the rule. As previously discussed, travel agents routinely collect and use much of the information to be covered by the rules. There is no practical way to determine in any individual case whether an e-mail was provided solely because the customer wanted the agency to be able to contact him in the event of a problem affecting the reservation or solely because the government was asking for the information, or some combination. Trying to read the traveler’s mind in connection with data disclosure will not be a reliable or productive exercise and would place a taint on every piece of pertinent information collected after the effective date of the rule.

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<sup>5</sup> Emphasis added.

This proposal traces its lineage to proposed section 70.4, about which the NPRM says little more than that there are privacy issues and the airlines, the only parties against whom the rules directly operate, must use the data only for the purposes for which it is collected. There are also references to mandatory destruction of data so that “information is not recoverable.”<sup>6</sup>

This may be fine as regards the data in the hands of the airlines or the government, but to the extent that this information is collected by travel agents and is redundant with information agents now collect and use in the ordinary course of business, there is a major problem. This information is not subject to destruction under the regulations, nor could it be. The fact that the government now wants to capture some of the same data does not warrant a rule that effectively destroys a major component of travel agency customer service, among other things.

One solution would be to interpret the reference to “information collected” as referring only to the information in the hands of the airlines or the government. If that is seen as too facile, then the section of the rule should be dropped. Privacy laws will still cover data in the hands of the government, and airlines have privacy policies regarding the use of most of the data in their hands. Travel agencies jealously safeguard customer data in their hands and did so long before “privacy rights” became a common term in public discourse.<sup>7</sup> Agencies have always understood that the details of their clients’ travel plans were not to be disclosed to third parties. But the information involved in this case includes communications information that is used by travel agencies to work with and in the clients’ interests. If agency clients don’t want to produce

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<sup>6</sup> 70 Fed. Reg. 71900.

<sup>7</sup> To the extent it is used to communicate travel opportunities to prior clients, customer resistance is usually effective to stop unwanted solicitations. And if not, federal law in the form of the CAN-SPAM Act and the Junk Fax Prevention Act, equip consumers with effective means to stopping unwanted commercial use of their information.

the information the government seeks, due to privacy concerns or other reasons, they are free to do so without consequence under the proposed regulations, just as they have always been free to refuse to give to their agent and information beyond the bare essentials necessary to make the booking.

Section 71.10(h) will wreak havoc on travel agency operations without any commensurate benefit to the public health goals of the NPRM. The rules should therefore concern themselves with the best way to collect the information needed for public health administration and leave the tangential issues out of this proceeding.

#### **VI. A GOVERNMENT-FUNDED COMMUNICATIONS PROGRAM SHOULD ACCOMPANY PROMULGATION OF THE DATA COLLECTION RULES.**

While the NPRM cites studies suggesting that the public will be highly receptive to requests to provide the relevant information, ASTA believes that the compliance costs of collecting the data will be significantly higher if the entire communications burden with respect to the purpose and operation of the rules is left to travel agents and airlines. Travel agents typically work under intense time pressure to secure essential information from a prospective traveler and to make accurate reservations that meet the client's needs. If the typical dialogue must be interrupted and expanded with explanations of why certain new information is being asked for, on a purely voluntary basis, the process of making even a simple booking could take a lot longer than the 45 seconds estimated in the NPRM.

The soundest approach, one ASTA has advocated in connection with Secure Flight, is for the government, at its expense, to initiate a broad based communication effort to explain the rules to the public. ASTA is ready to work constructively with CDC and other relevant federal agencies to help craft an understandable and positive message. This process will help assure that

the information the public gets about the rules is consistent and in accord with the law, without placing the entire burden of explaining the rules on the travel industry.

Respectfully Submitted,

AMERICAN SOCIETY OF TRAVEL AGENTS, INC.

By: \_\_\_\_\_

Paul M. Ruden