

qrulepubliccomments

From: Mietus, John [John.Mietus@dlapiper.com]
Sent: Wednesday, March 01, 2006 4:37 PM
To: qrulepubliccomments
Subject: Comments of Cathay Pacific Airways Limited
Attachments: cathay_qrule_nprm.pdf

Enclosed for filing please find the Comments of Cathay Pacific Airways Limited to the CDC's Notice of Proposed Rulemaking entitled "Control of Communicable Diseases" (RIN 0920-AA03).

Respectfully submitted,

John R. Mietus, Jr.
Counsel for Cathay Pacific
DLA Piper Rudnick Gray Cary US LLP
1200 Nineteenth Street, NW
Washington, DC 20036
202-861-6466

<<cathay_qrule_nprm.pdf>>

The information contained in this email may be confidential and/or legally privileged. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please contact the sender by reply email and destroy all copies of the original message. To contact our email administrator directly, send to postmaster@dlapiper.com

Thank you.

BEFORE THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR DISEASE CONTROL AND PREVENTION

_____)	
In the Matter of)	
)	
CONTROL OF COMMUNICABLE)	RIN 0920-AA03
DISEASES)	
)	
Notice of Proposed Rulemaking)	
_____)	

COMMENTS OF CATHAY PACIFIC AIRWAYS LIMITED

Communications with respect to this document may be served upon:

John R. Mietus, Jr.
DLA PIPER RUDNICK GRAY CARY US LLP
1200 Nineteenth Street, N.W.
Washington, DC 20036
(202) 861-6466
john.mietus@dlapiper.com

Counsel for CATHAY PACIFIC
AIRWAYS LIMITED

March 1, 2006

BEFORE THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR DISEASE CONTROL AND PREVENTION

In the Matter of)	
)	
CONTROL OF COMMUNICABLE)	RIN 0920-AA03
DISEASES)	March 1, 2006
)	
Notice of Proposed Rulemaking)	
)	

COMMENTS OF CATHAY PACIFIC AIRWAYS LIMITED

By Notice of Proposed Rulemaking ("NPRM") published in the *Federal Register* on November 30, 2005, 70 *Fed. Reg.* 71,891, the Centers for Disease Control and Prevention ("CDC") proposed sweeping changes in the quarantine rules, codified at 42 CFR Parts 70 and 71, that seek to prevent the "introduction, transmission, or spread of communicable diseases from foreign countries into the U.S. and from one State or possession into another."

Introduction

Cathay Pacific Airways Limited ("Cathay Pacific"), a foreign air carrier based in the Hong Kong Special Administrative Region of China, would be affected by the proposed rule both on its transpacific flights serving Los Angeles, San Francisco, and New York and on numerous, domestic U.S. "code-sharing" operations with its oneworld partner, American Airlines, Inc.^{1/} Cathay Pacific appreciates the opportunity to comment

^{1/} Many international passengers arrive at their U.S. destination after flying on a ticket that shows flights on a single airline, but aboard aircraft operated by different airlines.

(footnote continued to next page)

on the proposed rule, both in these comments and those filed by the Association of Asia Pacific Airlines, of which it is a member.

Like other air carriers serving Asia, Cathay Pacific has experienced first-hand the disruption in air travel and airline operations that occurs when a communicable disease like SARS emerges. Thus, it recognizes, appreciates, and supports the governmental interest in enhancing quarantine procedures and the CDC's proactive steps in this regard. But Cathay Pacific urges the CDC also to be mindful of the impact that the CDC's proposed data-collection requirements -- specifically, the requirement that carriers endeavor to identify ill persons and collect detailed passenger contact information -- would have on U.S. and foreign airlines alike. Quarantine-related data collection requirements could, in many respects, be met more efficiently by resorting to existing government sources (*e.g.*, the Advance Passenger Information System or "APIS") and resources (*e.g.*, customs and public health inspectors). Thus, the CDC should work with other U.S. government and local health agencies, the governments of other countries, and international associations (including the International Civil Aviation Organization, International Air Transport Association, and the World Health Organization) to harmonize data collection requirements and in-flight "ill person" reporting to the extent feasible.

(footnote continued from previous page)

The definitions in part 70 of "airline" (a carrier "operating commercial passenger flights under regular schedules within the United States") and of "international voyage" in part 71 should address the relative obligations of ticketing and operating carriers when passengers travel to the U.S. using code-sharing flights. Further, parts 70 and 71 should clearly establish the provisions that govern a passenger continuing an international voyage on a single ticket where that passenger boards a code-sharing flight in the U.S. to reach his or her ultimate U.S. destination.

Comments

Cathay Pacific recognizes that air carriers have a role in helping to identify ill passengers where feasible and in assisting the CDC and other world health agencies in implementing sound public health measures. But it is not appropriate to assume that air carriers are the best-equipped or most appropriate entities to collect and manage passenger-related health and locator data. For example, it has been extraordinarily difficult and costly for carriers and U.S. Customs and Border Protection ("CBP") to implement APIS over the past decade, and the data collection proposed by CDC in proposed section 71.10 even extends beyond APIS requirements. It is likely that carriers' APIS investments will be only partially adaptable to the full scope of a CDC-required passenger location system. And most carriers in today's challenging financial environment are ill-equipped to develop an entirely new data collection, transmission, and warehousing system for CDC-required passenger location information. Thus, it would be appropriate for the CDC to work, in the first instance, with CBP to determine whether elements of the APIS system could be shared between these government agencies instead of creating new obligations on private enterprise.

The proposed expansion of the requirement that carriers and their staff notify CDC of "ill persons" offers a different set of data collection concerns. The proposed definition of "ill person" includes signs and symptoms, such as headache with neck stiffness or diarrhea, that may not be apparent to airline staff unless the passenger discloses them or seeks medical assistance. Airline staff also should not be held to the standard of a qualified medical professional in identifying ill persons, not only because they may lack detailed medical training, but also because that standard might be

construed to impose on the airline the responsibility to properly identify and treat illness. And the mandate of the Air Carrier Access Act, 49 U.S.C. 41705, that carriers not unreasonably discriminate against passengers with disabilities could place carriers in an untenable position when confronted with respiratory distress or other signs and symptoms that may be associated with a protected disability rather than a communicable disease.

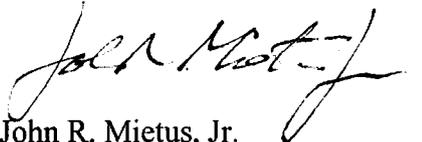
For all of these reasons, it is more appropriate for government officials, such as the CDC, Federal border protection agents, or local and state health agencies to both identify ill passengers and collect passenger locator information. For example, public health authorities in departure countries could offer the first opportunity to identify ill persons, *e.g.*, using temperature scanners and trained personnel to screen departing passengers or those otherwise identified before flight departure. Carriers would, of course, endeavor to identify passengers whose illness during flight appears (under a set of clear, international guidelines) to pose a public health concern. Cathay Pacific would urge the CDC to continue the practice of having the captain or other airline official make the initial contact with the local health authority, preferably the airport health or quarantine station. This will better ensure that the passenger's acute medical needs are being addressed promptly and offer the CDC, should a true public health concern exist, a medically-trained point of contact. Finally, CBP and other U.S. government agents at U.S. ports of entry would provide an additional level of review for arriving passengers.

As for the collection of passenger locator information, Cathay Pacific encourages CDC and CBP to consider collecting, on arrival, the paper "model passenger locator cards" developed by the World Health Organization and the International Air Transport Association. This approach would eliminate the potential for outdated information associated with a "point of sale" collection system and the burden on passenger check-in associated with "point of departure" collection. It also would keep sensitive personal information out of the hands of air carriers, reducing privacy concerns, and ensure that the U.S. government has immediate access to the data collected. U.S. leadership in adopting internationally-recognized, harmonized methods to identify ill passengers and collect and maintain passenger locator information will encourage other countries to follow. This could set the stage for a uniform, worldwide system that recognizes valid public health requirements while avoiding potential barriers to the efficient movement of passengers.

Conclusion

Cathay Pacific is committed to providing safe air transportation for its passengers and assisting governments, where feasible, appropriate, and cost-effective, in the maintenance of public health. It submits that the modifications proposed in these comments -- harmonizing international public health precautions among countries and placing primarily on government the burdens associated with public health -- will best meet the CDC's goals.

Respectfully submitted,



John R. Mietus, Jr.
DLA PIPER RUDNICK GRAY CARY US LLP
1200 Nineteenth Street, NW
Washington, DC 20036
(202) 861-6466

Counsel for CATHAY PACIFIC
AIRWAYS LIMITED

March 1, 2006