

## qrulepubliccomments

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**From:** LAVIN Douglas [LAVIND@iata.org]  
**Sent:** Wednesday, March 01, 2006 10:15 AM  
**To:** qrulepubliccomments  
**Subject:** Comments on Proposed CDC Rule: "Control of Communicable Diseases"  
**Attachments:** IATA CDC NPRM FINAL.doc



IATA CDC NPRM  
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To whom it may concern,

Attached please find comments by the International Air Transport Association on the CDC proposed rule "Control of Communicable Diseases" (Docket 42 CFR 70,71)

Thank you for your consideration.

Douglas E. Lavin  
Regional Vice President- North America  
phone: +(202) 293-9292  
fax: +(202) 293-8448  
lavind@iata.org

International Air Transport Association  
1750 K Street NW, 12th Floor  
Washington, DC 20006  
www.iata.org

<<IATA CDC NPRM FINAL.doc>>

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

_____	)	
<b>In the matter of:</b>	)	
	)	
<b>Control of Communicable Diseases</b>	)	<b>DOCKET</b>
_____	)	<b>42 CFR Part 70/71</b>

**COMMENTS OF THE  
INTERNATIONAL AIR TRANSPORT ASSOCIATION**

**Notice of Proposed Rulemaking on Control of Communicable Diseases**

**42 CFR Parts 70 and 71**

**(Federal Register / Vol. 70, No. 229, November 30, 2005)**

**Communications in respect of this document should be addressed to:**

**Douglas E. Lavin**  
**Regional Vice President, North America**  
International Air Transport Association  
1750 K Street, N.W.  
12th Floor  
Washington, D.C.20006  
Tel: 202.293.9292

**BEFORE THE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
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Control of Communicable Diseases	)	<b>DOCKET</b>
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**COMMENTS OF THE  
INTERNATIONAL AIR TRANSPORT ASSOCIATION**

The International Air Transport Association (IATA), the industry association representing 265 of the world's scheduled international airlines - including nearly all foreign and domestic carriers serving the United States - is pleased to provide its comments to the above-referenced Notice of Proposed Rulemaking (NPRM).

The protection of public health is an important obligation of government. The means taken to do so should to the greatest extent possible seek to ensure that obligations imposed upon the civil air transportation sector do not unduly affect the ability of airlines to operate their services in an efficient manner both within the United States and to and from the United States. Obligations imposed must also be designed to result in the achievement of the stated purpose for implementation. Industry input is therefore essential for the development of regulations that achieve governmental objectives with the least disruption of airline operations and greatest cost efficiencies.

These comments will focus on provisions in the NPRM that are of greatest concern to IATA and its members. IATA's comments on passenger data collection proposals focus on their implications to flights coming into the United States from foreign destinations. IATA defers to individual U.S. carriers and the Air Transport Association of America (ATA) on issues related to domestic travel. Further, IATA recognizes that a number of its U.S. and non-U.S. members are

filing their own comments on the NPRM. IATA's submission is designed to complement these individual airline comments by focusing on the global implications of this proposed regulation.

IATA, and other industry bodies, have in the past provided comments in respect of initiatives of other departments and, in particular, have provided extensive comments to the Immigration and Naturalization Service (INS) in respect of proposals made by the INS regarding passenger manifest reporting requirements as published in Federal Register/ Vol.68, No. 2, January 3, 2003. IATA recommends that CDC consult the above-referenced prior IATA INS NPRM response in order to provide additional context for the IATA submissions that follow in this NPRM response.<sup>1</sup>

The following are specific comments on particular sections of the NPRM that are of greatest concerns to our membership:

***Passenger Information  
The Proposed Reporting Requirements  
42 CFR §70.4- 70.5 and §71.10 - 71.11***

The proposal of greatest concern to air carriers relates to requirements for submission of passenger information to CDC, including data elements well beyond those collected by airlines during the reservations process and currently required by APIS for international flights and information additional to that collected for other commercial and governmental purposes.

The proposed regulation in §70.4 and §71.10 requires that an airline operating interstate or international service, respectively, request specified information from passengers, retain it in an electronic database for sixty days and make such information available to CDC within twelve hours of a request. The proposed new data elements consist of: (i) emergency contact; (ii) telephone number; (iii) e-mail address; (iv) current home address; (v) traveling companions; and (vi) return flight. While IATA is determined to support CDC's efforts to gather relevant

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<sup>1</sup> IATA views it as imperative that definitions used in any Rule are consistent with those definitions already used by other relevant government agencies.

passenger information, we strongly believe that the proposal as drafted regarding the types of data and method by which airlines should collect this information is inconsistent with operational or business realities. Further still, as there is no mandatory requirement for passengers to provide this data, compliance with the regulation is likely to be low and will therefore not fulfill the stated purpose of the proposed Rule. The following sets forth our primary concerns in this regard.

*1. Cooperation Between CDC and CBP: Creating a Single Window*

In 2001 the U.S. Department of Treasury instituted a regulation implementing the Aviation Transportation Security Act (2001) that identified INS (now part of U.S. Customs and Border Protection (CBP)) as the single U.S. Government point of contact for airlines to provide required passenger and crew information to the U.S. Government. Further manifest requirements instituted under the Enhanced Border Security and Visa Entry Reform Act (2002) also identified CBP as the single point of contact for airline data, even though the data might be required by other U.S. government agencies, such as Animal and Plant Health Inspection Service or the Transportation Security Agency (TSA).

IATA member airlines invested many millions of dollars to develop and implement systems to meet CBP's requirements in this regard. Our members' systems are now designed to feed this passenger information to this single window. IATA is therefore very concerned about CDC's proposal to create a new regulatory scheme calling for the collection of passenger data through a completely new collection process managed by a separate agency. Our major concerns can be summarized as follows:

- **Lack of standardization:** IATA has worked closely with international bodies, such as the World Customs Organization (WCO) to standardize transmission of passenger data requirements. The current standard for data transmission is UN/EDIFACT. Airlines have designed their single window to comply with the UN/EDIFACT protocols. Introduction of a U.S. protocol outside of the UN/EDIFACT standard will reduce the ability of airlines to achieve the objectives of the NPRM.

- **Duplication:** It is unreasonable for airlines to be expected to comply with two separate collection points for passenger information from the same government. This is particularly true in this instance when much of the information that CDC proposes to collect is already being collected from the airlines by CBP. As noted below the cost of developing and implementing systems to collect this information is substantial. To now require a duplication of this effort to meet the same government's needs cannot be justified.
- **Lack of coordination:** The NPRM states that while the agency is currently developing a Memorandum of Understanding with Department of Homeland Security (DHS) regarding access to PNR data, data sharing among government agencies is uncertain and CDC must press ahead with its own initiative. Airlines should not be required to make substantial investments because one part of the U.S. Government is unwilling or unable to coordinate with a sister agency. Rather than requiring a second window, CDC should focus its efforts on expediting an MOU that allows for the sharing of this PNR information. IATA would recommend that the passenger data provisions of this NPRM be withdrawn if the Department of Health and Human Services (HHS) and DHS have already entered into an MOU regarding data sharing,
- **Difficulty of compliance:** IATA is concerned that multiple, overlapping and potentially inconsistent data collection windows will result in a potential degradation of the collected information.
- **Consistent data sharing:** Clearly any successful effort to address communicable disease must be international in scope. As the representative of international airlines, IATA strongly believes that governments addressing the same challenges should focus on ensuring that their efforts be harmonized so as to promote effective regulation and to minimize the disruption to the international aviation system resulting from these

regulations. IATA therefore urges the U.S. Government to seek to harmonize its data collection requirements with those of its sister agencies in other governments. Multiple U.S. Government data collection methods and regulations will serve to minimize the opportunity to harmonize data collection and to share the data across borders generally.

## **2. *The Point of Sale and Point of Departure Data Collection Scenarios***

In addition to concerns about multiple data collection windows, IATA also believes that the method proposed by CDC to collect this information does not reflect a realistic approach to address the issue. Further, the NPRM is based upon the premise that every airline collects the required data on every passenger and stores this data for lengthy periods, easily retrievable in the event of a public health emergency. As mentioned above, the cost burden – even by CDC’s own conservative estimates – will run into the tens of millions as this solution requires many entities – airlines, GDSs, travel agents, passengers, to name a few - to fundamentally change the way they operate. The potential duplication of passenger data storage by multiple airlines is unnecessary and unduly burdensome upon the industry. CDC could and should share the burden for data collection by creating its own database and minimizing the burden of collection, the duplication of storage and the risk of data privacy issues. IATA would be happy to work with CDC and other agencies to resolve this issue and assist in providing solutions, such as the Passenger Locator Card.<sup>2</sup>

CDC in its Regulatory Impact Analysis (RIA) envisages two approaches by which an air carrier could obtain the required information. The first scenario, CDC’s preferred option, the so-called “Point of Sale” (POS) method for data collection, is focused on collecting the information from travel agents and Global Distribution Systems (GDSs). The second scenario, the “Point of Departure” (POD) method of data collection, is proposed to be accomplished at the check in or departure desk. The POS and POD approaches were examined in the RIA under the following

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<sup>2</sup> See information on Passenger Contact Information Working Group (PCIWG) below.

three scenarios: Option 1: International Inbound flights only (IATA's main focus); Option 2: International inbound plus large and medium hubs; and Option 3: International inbound plus all domestic transportation.

The RIA accompanying the NPRM operates from a flawed understanding of the relationship between airlines and travel agents and, at its heart, contains a misunderstanding of the serious operational impact of passenger check-in delays at congested hub-airports.

- **The Point of Sale Method of Data Collection: Unrealistic Assumptions**

IATA believes that the POS passenger data collection scenario as presented is sufficiently flawed as to be unworkable if the goal is collection of information from the largest number of passengers possible. The RIA on page 1-3 makes the following observation, which underlies much of the analysis in respect of the POS method:

Rather than using an assumption that costs will be minimal due to access to other government databases, the main analysis in this Regulatory Impact Analysis (RIA) assumes that the airlines share data with the GDSs and travel agencies, minimizing duplicate information gathering and streamlining the data collection process.

The success of the POS passenger data collection method depends on GDSs and travel agencies reciprocally **sharing information with the airlines**, something that is not done today on a broad scale. As written, the NPRM places a disproportionate burden upon airlines in comparison with travel agents - who have an earlier opportunity to obtain the data required by CDC - as a significant portion of inbound international travel is sold by travel agents located outside the U.S. Agents are very reluctant to share client contact information with their airline competitors. As noted by British Airways in its submission on this NPRM: “[T]ravel agents will be reluctant to collect and store in carriers’ reservation systems their clients’ addresses and phone numbers fearing the carriers might contact their clients directly.” It is unduly burdensome for CDC to impose an obligation on airlines to provide data to which they have very limited access or

control<sup>3</sup>. IATA recommends that any POS data collection requirement be imposed on travel agents directly, rather than airlines themselves. Additionally, the NPRM states that airlines would not incur data collection costs under a POS scenario. This erroneous assumption ignores bookings made directly with airlines through their call centers. The airline should not become the de facto agent of CDC in soliciting, collecting and storing such data, while at the same time being one step removed from the creation and storage of much of this data, and subject to fines and penalties for failure to meet the provisions of the regulation.

- **The Point of Departure Method of Data Collection: Significant Operational Challenges**

On page 71916 of the NPRM, CDC estimates that it will require an additional 1.5 minutes for the collection of the required passenger information from non-frequent flyers at the point of departure. IATA would suggest that the 1.5-minute timeframe has been substantially underestimated. The collection of such data requires interrogation of the passenger and an explanation as to why the data is required. The passenger then has to locate the data, which may not always be readily available (possibly located in hold baggage). Once the data has been located, the agent must input this data into the airline's system. This three-step process could, in even the most optimistic of scenarios, double the timescale proposed in the NPRM.

Even if the premise proposed in the NPRM is accepted, the analysis suggests that airlines can achieve this 1.5-minute target through the hiring of additional personnel that could be provided with portable workstations to gather the information efficiently. Unfortunately, this analysis fails to note the challenge of introducing additional airline personnel at space-constrained airports. Further, linking a wireless workstation to existing IT systems would require an all-new industry practice with, in all likelihood, custom-developed technology. Even more troubling is the lack of analysis on the cumulative or "cascading" effect of individual passenger data input

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<sup>3</sup> The issue of control of data extends beyond the simple case of travel agents to include codeshares and interline flights. Further still, the difficulty in obtaining data on transfer passengers should not be underestimated.

delays upon passengers further behind in the check-in line. For the first passenger in line, a 1.5-minute delay is barely noticeable. For the 30th passenger in line, this delay becomes substantial, even with the addition of extra airline staff to perform data input. The delays cascade, eventually leading to operational delays resulting from the inability of passengers to check-in in a timely manner – a matter of considerable concern at airport hubs such as London Heathrow or Frankfurt and others that are capacity constrained with exceedingly tight slots for aircraft takeoffs and landings. Each of these issues reflects a significant indirect cost of the proposed Rule which CDC has failed to take into account. It is possible that operational difficulties resulting from the POD scenario could lead to annual incremental costs due to flight cancellations, loss of slots etc. that could conceivably exceed the direct costs related to staffing and IT.

In supporting the POD proposal, the NPRM cites a Harvard University telephone survey, indicating a 94% willingness on the part of passengers to be contacted by public health authorities under very specific circumstances: the survey's first question was as follows: "If you had been on an airplane with someone who had a highly contagious disease such as SARS, tuberculosis (TB) or meningitis, would you want or would you not want public health authorities to warn you of your potential exposure?" IATA believes that the response rate cited above cannot be extended to all passengers. Furthermore, all the respondents to the Harvard University survey were reported as being American citizens or residents. This represents a major sampling flaw in the poll, as it must be questioned whether the same response would be elicited from foreign nationals about a foreign government, i.e. the United States, accessing and storing personal data. To ignore this entire class of passengers is to create a survey result that is of questionable validity. IATA believes that the positive response rate would be different if it were made clear to the respondent that such a collection system could result in check-in delays of up to 90 minutes and potentially frequent flight cancellations at certain busy airports.

- **The Challenge of Voluntary Passenger Provision**

As CDC is aware, rates of voluntary provision in the United States of next of kin contact data have historically been low.<sup>4</sup> The NPRM places the obligation on airlines to comply with new data collection and storage requirements and to report data to CDC upon request, with significant penalties for non-compliance. However, passengers are under no obligation to provide their contact data whether via the POS or POD scenarios. IATA questions whether the optimistic scenarios proposed by CDC would be achievable given low rates of passenger compliance.

- **The Costs of Data Collection Implementation**

Questions of cost burdens inevitably arise with projects of the magnitude of the required reprogramming of IT systems necessary for both the POS and POD scenarios. As CDC itself has noted in the NPRM at page 71916, “CDC assumed major and foreign airlines will each incur reprogramming costs of \$10 million.” As noted earlier, this figure ignores incremental costs associated with soliciting data from passengers, not just those who ultimately fly, but also those who book travel but later cancel, or the costs associated with gathering information from those who merely make a booking inquiry. In IATA’s view, the CDC cost estimates are very much on the conservative side and will have a negative impact in an economic environment where North American carriers lost \$10 billion in 2005 with further losses anticipated in 2006.

### 3. ***Privacy Issues and International Law***

The CDC RIA, at page 38, acknowledges that full implementation of the POS approach would conflict with existing international law regarding data sharing and privacy:

ERG assumes that the POS scenario can largely be implemented, but recognizes that there are impediments to setting up this approach. For example, Amadeus, one of the four dominant GDS companies, is foreign owned and stores collected passenger information in Germany; it is governed by German law regarding data

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<sup>4</sup> One IATA member carrier has indicated that in its experience this rate of voluntary provision of data is on the order of approximately twenty percent. Another IATA member in a survey that it conducted found a compliance rate that was even lower.

sharing and privacy. *Complete implementation of the POS scenario would thus require changes in international law.*<sup>5</sup>

IATA is reluctant to support any data collection scheme that, on its face, violates international law. Making any rule final, without having first resolved the significant conflicts between various countries' national laws would place airlines in untenable position of deciding which law to follow and which law to violate. CDC should be aware of the significant penalties that exist in many jurisdictions for violation of data privacy laws. The above RIA language assumes that rule changes in jurisdictions other than the United States can be achieved within the timeframe for compliance. However, recent experience suggests otherwise. The protracted process of implementing an agreement between the E.U. and the U.S. on access to PNRs has demonstrated that no such assumption should be made. The prospects in this regard are further complicated by the recent opinion of the Advocate General of the European Court of Justice that the 2004 E.U. – U.S. agreement on transfer of passenger data for use by CBP is invalid on jurisdictional grounds and should be annulled. If the E.U.-U.S. agreement founders, it becomes difficult to see how the CDC proposal can be squared with the significant conflicts of laws issue that arises.

Although the quotation referenced above refers to POS, IATA believes that the POD proposal would also expose airlines to fines and or prosecution in those countries for failure to comply with the applicable foreign laws. Many IATA carriers store passenger data in Europe, raising further concerns about potential conflicts between the U.S. and the E.U. IATA is also concerned that there is no indication in the NPRM that CDC performed any substantive review of foreign privacy legislation, consulted with CBP or consulted with international organizations such as ICAO or WCO to determine what would constitute internationally acceptable categories for data collection. There is also no indication that CDC has consulted with relevant governments on this issue in advance of the publication of the NPRM. IATA would submit that the legal limits to cross-border data transfer, in and of themselves, render the POS and POD scenarios unworkable.

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<sup>5</sup> Emphasis added.

**Reporting Death or Illness Among Passengers:  
42 CFR §70.1- 70.3 and §71.1, and §71.6-71.7**

IATA recognizes the importance of reports from airlines of death or illness among passengers relating to suspected communicable disease. IATA is nonetheless concerned that the definition of “ill person” as proposed in §70.1 and §71.1, with its clinical descriptions of symptoms, does not serve to assist lay persons/crew in ascertaining whether in fact a passenger suffers from a communicable disease, a chronic condition, or an allergic reaction. CDC is therefore encouraged to modify its proposed definition of “ill person” to a form similar to that which will soon be adopted by the International Civil Aviation Organization (ICAO) to be included in the Aircraft General Declaration:

A communicable disease should be suspected when a passenger or a crewmember has a body temperature of 38°C (100°F)<sup>6</sup> or greater **and** exhibits one or more of the following signs and symptoms:

- Appearing obviously unwell
- Persistent coughing
- Impaired breathing
- Persistent diarrhea
- Persistent vomiting
- Skin rash
- Abnormal bleeding
- Reduced mental clarity

This language meets the objectives of the proposed amended § 70.1 and 71.1, and in fact closely parallels the amendments proposed in the NPRM, while better reflecting the limits on cabin crew observation of passenger condition.

A definition focusing on pinpoint descriptions of symptoms over specified periods of time is inappropriate for airline cabin crew whose safety and service-related duties may not afford them the opportunity to make the necessary observations. Crew may not be aware that a passenger is running a temperature or has other symptoms, unless brought to their attention by the

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<sup>6</sup> By measurement with oral thermometer.

passenger. Passengers themselves may be reticent to provide details of their condition to crew, particularly as to diarrhea or vomiting.

IATA further notes that a report to CDC of every death on-board an aircraft that is not evidently related to an apparent communicable disease, such as a cardiac arrest following an angina attack, may lead to a substantial increase in reports to CDC with no public health benefit. IATA would recommend that the proposed requirements in §70.2 be amended to refer to “death from a suspected communicable disease”

IATA supports the proposed change to the point of contact from local health authorities to CDC. IATA believes that this provision provides a clarity currently lacking in 42 CFR Parts 70 and 71. Designation of a CDC official as the point of contact simplifies matters for an airline that might find itself having to choose among several local health agencies and officials for such notification. However, the requirement that such a report be made within one hour prior to landing may not be realistic depending on the duration of the flight and the time of passenger death. Further, the proposed reporting requirement introduces an undue element of rigidity into such reporting. Moreover, the obligation to conduct regular drills and exercises adds an additional cost element.

These comments will not address in depth the issue of proposed provisional quarantine measures, other than to note that CDC refers to no provision in the NPRM for notification of an airline when an airline’s crewmembers are among those who may be selected for provisional quarantine. IATA would request that CDC consider adding a mechanism for notification of affected airlines by CDC in the event of provisional quarantine of crew as this has an important impact upon airline operations. Additionally, IATA is concerned that provisional quarantine may take place at an airport. Although cognizant of the fact that restriction on movement is a key aspect of preventing transmission of disease, airport facilities are not designed to accommodate passengers – particularly those who may be ill - for short or long periods of time. Issues arise with respect to reconciliation of baggage, medical and hygiene facilities and general well being of

passengers and crew. IATA would urge CDC to establish quarantine facilities off-airport and to suitably equip these facilities to deal with large numbers of displaced people for adequate time periods. It should be emphasized that carriers should not bear the expense related to quarantine arrangements since this is inherently a government function.

#### **4. Industry Input**

As noted above, IATA recognizes the legitimate need of the U.S. Government to implement regulations that are designed to effectively control communicable disease that may be transmitted while traveling by air. While we are greatly concerned about the effectiveness of the NPRM as drafted, airlines are committed to working closely with the U.S. Government to find solutions for these difficult challenges and to provide comprehensive industry input into this process. To that end, as CDC is aware, IATA and the ATA created a Passenger Contact Information Working Group (PCIWG) prior to the issuance of the NPRM. The terms of reference of this group include:

- Studying emerging government requirements for passenger contact information;
- Determining required common data elements;
- Developing guidelines for the collection of accurate passenger contact information in a timely manner;
- Liaison with members of the IATA Medical Advisory Group; and
- Liaison with travel agent organizations to obtain their support for the collection and sharing of passenger contact information.

The group consists of representatives from IATA, ATA and their respective airline members that have reservations and Departure Control System (DCS) expertise, and equipment and systems vendors.

The PCIWG recently met in Atlanta with airline, World Health Organization (WHO), CDC and DHS (including CBP and TSA) representatives in attendance. The PCIWG will seek to assist CDC in developing regulatory amendments that reflect international best practice. The

group will also endeavor to align its proposed amendments with the goal of harmonization of varying governmental requirements. Moreover, such efforts will enable all participants to take advantage of past lessons learned by airlines and regulators from efforts such as those made in respect of Severe Acute Respiratory Syndrome (SARS). A coordinated international effort would help CDC address any possible conflict of laws in matters such as related to data privacy.

In conclusion, IATA believes the underlying assumptions of the NPRM are very conservative and not reflective of true difficulties and costs associated with the implementation of the proposals as they relate to data collection. Further, IATA does not believe that due consideration has been given to the impact of the proposed regulations upon carriers operating to the United States, nor to potential solutions that utilize government funding and resources.

IATA appreciates this opportunity to provide comments to CDC. Any request for clarification or additional information required from IATA should be directed to the undersigned.

Respectfully submitted,

Douglas E. Lavin

Regional Vice President, North America  
International Air Transport Association  
1750 K Street, N.W.  
12th Floor  
Washington, D.C.20006  
Tel: 202.293.9292  
[lavind@iata.org](mailto:lavind@iata.org)