

qrulepubliccomments

From: Diane Peterson [DPeterson@aci-na.aero]
Sent: Wednesday, March 01, 2006 4:51 PM
To: qrulepubliccomments
Subject: ACI-NA Comments on CDC NPRM on Control of Communicable Diseases
Attachments: ACI-NA Comments on CDC NPRM March 1, 2006.doc

Ms. Brooks,

Attached are ACI-NA comments on the CDC's Notice of Proposed Rulemaking on Control of Communicable Diseases.

If you have any questions regarding this filing, please contact me by any of the methods listed below.

Respectfully submitted,

Diane Peterson
ACI-NA

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3/2/2006



March 1, 2006

Ms. Jennifer Brooks
Centers for Disease Control and Prevention
Division of Global Migration and Quarantine
1600 Clifton Road, NE (E03)
Atlanta, GA 30333

Subject: NPRM on Control of Communicable Diseases (“Q Rule”)

Dear Ms. Brooks:

The Airports Council International-North America (ACI-NA) is submitting the following comments on behalf of its U.S. airport members in response to the Notice of Proposed Rulemaking (NPRM) on Control of Communicable Diseases issued by the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC) on November 30, 2005.

ACI-NA represents the local, regional and state governing bodies that own and operate commercial airports in the United States and Canada. ACI-NA member airports enplane more than 95 percent of the domestic and virtually all of the international airline passenger and cargo traffic in North America.

The NPRM largely focuses on expanding the reporting requirements on airlines; providing due process provisions for individuals subject to quarantine and establishing penalties for violation of the regulations. However, the NPRM also proposes, almost in passing, additional requirements

on U.S. airports receiving international traffic, namely that they must provide without cost to the federal government suitable examination and quarantine space.

ACI-NA Position

ACI-NA supports and appreciates CDC's efforts to prevent the introduction and spread of communicable diseases into and within the United States. It is important for CDC to develop procedures for handling possible quarantine situations in consultation with airports and airlines. However, we believe that the introduction and spread of diseases is a national issue which warrants federal government responsibility and spending, instead of placing the burden on the aviation sector to provide facilities and services without any compensation. We also note that the NPRM proposes to place substantial additional burdens on airlines and airports and proposes to place few or no additional requirements on other sectors even though serious communicable diseases also could be introduced or transmitted via other modes of transportation.

ACI-NA strongly opposes the CDC NPRM's proposed requirement that U.S. airports receiving international traffic provide without cost to the federal government suitable examination and quarantine space. ACI-NA has fundamental objections to federal agencies' demands for space at airports without any compensation. ACI-NA is also concerned about CDC's proposed expanded data collection including its potential negative impact on airport facilities.

The NPRM Is Extremely Vague Regarding the Airport Requirement

The NPRM contains little discussion on the proposed airport examination and quarantine requirements. There is no indication of what might be involved in providing examination and quarantine space and related services. There is no indication of whether CDC is seeking to commandeer existing facilities or requiring the construction of new facilities for examination and

quarantine space. There is minimal explanation about who might be quarantined in the space which is supposed to be provided by the airport. There is no analysis of the potential costs to airports, airlines and their passengers of providing examination and quarantine space and whatever services might be associated. The lack of discussion and information in NPRM makes it difficult for ACI-NA to provide complete comments outlining all of our potential objections and concerns.

Airports Are Inappropriate Places to Quarantine Passengers

The NPRM articulates no rationale for requiring U.S. airports that receive international traffic to provide suitable quarantine space. It appears to add the requirement as an afterthought with little or no consideration of whether sites other than airports would be more appropriate for CDC to obtain quarantine space.

ACI-NA recognizes that there might be cases where airports should provide space where air passengers and crew (subsequently referred to as passengers) could be held separately for a few hours while CDC and other public health authorities decide on next steps when confronted with a potential quarantine situation. However, we strongly object to the notion that airports should provide quarantine space to the federal government without charge or for a period of time beyond a few hours. As discussed below, under the NPRM as currently drafted, it is conceivable that air passengers could be confined for days, weeks or even three-four months at the airport.

While the NPRM discusses the distinction between quarantine and isolation, the term “quarantine” for purposes of the regulation is defined as “holding on a voluntary or involuntary basis, including the isolation, of a person or group of persons in such place and for such period of time as the Director deems necessary or desirable to prevent the spread of infection or

illness” (emphasis added). The NPRM also states that “Each U.S. airport which receives international traffic shall identify...space, which is suitable for the quarantine of an arriving person or group of persons...” in proposed section 71.29.

Based on the chart in the NPRM on page 71904, this appears to mean that passengers could be quarantined for as little as a few hours at the airport during the incubation period following exposure up to a maximum of 4-6 weeks depending on the quarantinable disease and that, in addition, ill passengers could then be further quarantined (i.e. isolated) for the period of communicability following the onset of the illness, which could range from a low of 48 hours to a high of 90 days depending on the quarantinable disease. Thus, the NPRM, if adopted, could result in an airport having to provide quarantine space and related services for hundreds of passengers for three-four months. Depending on the seating configurations, a B747 can carry up to around 550 passengers and the A380 will be able to carry around 500-800 passengers. If the potential presence of a serious communicable disease is not discovered until the passengers are in the international arrivals area, there could be many more passengers involved, particularly during a peak arrival period during which several aircraft may arrive.

ACI-NA maintains that airports are not the best option for quarantining passengers arriving on international flights. Indeed, as transportation hubs for thousands of people being continuously distributed to other locations, airports are poor choices for quarantine facilities. Airports also do not have the type of facilities to house and confine a couple of hundred or more passengers for days, weeks or even months in a comfortable and secure environment.

Quarantined passengers could not be accommodated for extended time periods in hangars, cargo buildings or parking garages on airport property, which do not have the necessary climate controls and sanitary facilities. A very few airports might have facilities that lend themselves to

being more easily used for quarantining passengers, but the vast majority do not. However, it is difficult to visualize suitable space in any airport terminal including the international arrivals area, for housing passengers in comfortable and secure surroundings without seriously disrupting the functioning of the airport to the detriment of the airport, airlines, other passengers and the economy of the local community. Furthermore, quarantining passengers in an airport terminal probably would increase the chances for the communicable disease, if any, to spread resulting in even more individuals who have to be quarantined and more facilities that have to be decontaminated. Some airports have hotels on airport grounds, which might seem like an appropriate quarantine space, however, it would be highly unlikely that existing commercial hotels would have sufficient vacancies to handle substantial numbers of quarantined air passengers. Furthermore, these hotels are not under the control of the airport, having been obligated under long-term leases to third party hotel operators.

It is our understanding that CDC has Memoranda of Agreement with various hospitals which meet certain criteria and have agreed to manage ill travelers who might have a quarantinable disease. Presumably state and local public health authorities also have agreements and relationships with hospitals in their jurisdiction. ACI-NA suggests that such hospitals or other medically suitable facilities are much better places to house and take care of quarantined passengers and other individuals. Using such hospitals should also result in a more efficient and effective allocation of medical staff, medicines and other supplies.

Surely CDC should look at working with federal departments, such as the Department of Defense and Department of Veterans Affairs, to find active or idle facilities which could provide suitable quarantine facilities. There are numerous active military bases throughout the United States which could accommodate quarantine passengers more effectively than airports. The military certainly has the training and practice to securely house quarantine passengers,

possibly in military barracks. Some U.S. airports have Air National Guard facilities or other military facilities on their airfields and many U.S. airports are not far from military bases. As the Department of Defense closes some military bases and the Department of Veterans Affairs closes some Veterans Affairs hospitals, the CDC should be looking to acquire space that would be useful for quarantining passengers and other individuals from these Departments. According to GAO-06-248T, the federal government owns significant amounts of excess and underutilized property. Perhaps some of these properties might also be of use to the CDC.

If it becomes clear while an aircraft is still in the air that there is a real possibility of having to quarantine passengers, it may well make more sense to divert the flight to a military base or a location near a hospital better equipped to deal with a quarantine situation. If an aircraft that is landing at an airport is suspected of carrying passengers who might need to be quarantined, the aircraft should be isolated on the ramp as one does with bomb threats. The quarantined passengers could efficiently and easily be airlifted or bussed to an off-airport quarantine facility. Both of these options limit the potential for the disease to spread. If the problem is not found until the passengers are already in the international arrivals area, the passengers in question should be removed as quickly as possible to the appropriate hospital or military base.

However, there is no hint in the NPRM that the CDC even considered any options other than airports for quarantining international passengers. This is particularly odd given that CDC apparently can make other arrangements for quarantining passengers on flights within the United States since there is no mention of an airport requirement to quarantine passengers under its proposed Part 70 which deals with interstate quarantine. Or are the quarantine facilities at those U.S. airports receiving international traffic meant to handle quarantined interstate passengers?

We agree that, before an incident occurs, possible quarantine sites should be identified as part of a comprehensive community solution for dealing with possible communicable diseases that are quarantinable. We disagree that the quarantine sites should be at airports.

ACI-NA Objects to CDC's Demand for Free Space

One has to suspect that the reason for the apparent unwillingness of the CDC to consider other options for quarantine space is its belief that it can easily commandeer airport facilities without consulting or without providing any compensation.

ACI-NA remains concerned that through its regulations, CDC, together with some other federal agencies, demands cost-free space at U.S. airports. In the current regulation, CDC requires suitable office, isolation and other space for the exclusive use of federal officials without any compensation to international airports. This is burdensome in itself. Yet in the NPRM, CDC proposes to further demand suitable office, examination, quarantine and other exclusive space without payment to international airports.

ACI-NA contests the basic premise of the current regulation and the NPRM that airports are required to provide space conforming to federal agencies' standards without cost to the federal government. While the Secretary of Health and Human Services has authority to make and enforce regulations to prevent the introduction, transmission, or spread of communicable diseases, there is no specific statutory authorization for CDC to commandeer international airport facilities without payment.

ACI-NA also maintains that CDC's proposed occupation of airport facilities (whether public or private) is precisely the sort of government action that the Supreme Court has characterized as a *per se* "taking" requiring compensation to the affected parties under the Fifth Amendment.

Please see, e.g., *Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001) citing *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982) which states in part, “the clearest sort of taking occurs when the government encroaches upon or occupies private land for its own proposed use. Our cases establish that even a minimal ‘permanent physical occupation’ of real property requires compensation under the Clause.” We do not view the discussion on the “taking” issue on page 71927 of NPRM in Federal Register as applicable to the airport situation.

Therefore, ACI-NA strongly believes that CDC’s demand for exclusive space on airport property without cost to the federal government exceeds both its statutory and Constitutional authority. This position applies to the current regulation and the NPRM provisions requiring airports to provide space free of charge to CDC.

The NPRM Contains No Cost-Burden Analysis of Airport Free-Space Requirements

The NPRM demands that U.S. airports receiving international traffic provide cost-free space for examination and quarantine space (in addition to the current reference to office space), but gives no indication of what exactly it is seeking.

Our understanding is that the CDC has generally been able to obtain cost-free office space at the airports it has designated as quarantine stations, although not all the planned stations have been opened. It is one thing for airports to agree voluntarily to provide limited cost-free office space in the international arrivals area for CDC to deal with air passengers. It is quite another thing for CDC to demand that airports provide space to conduct activities, which have nothing to do with air passenger processing-e.g. handle land border issues and coordination with state and local officials and to demand that existing facilities be removed from their original purpose or renovated or new facilities be constructed to provide examination and quarantine space without compensation. The NPRM, if adopted, is particularly concerning to airports that are already

quite far along in the design process for badly-needed new terminal capacity, and cannot afford to wait for the lacking technical (not to mention legal) clarity of its proposed space-provision requirements.

ACI-NA assumes the reference to examination space could include CDC's prototype design for a 400 square foot biohazard/examination/isolation room with negative air pressure at certain airports. Such a room would be quite expensive to provide. The NPRM does not state how much quarantine space would be required or whether it would reflect the size and type of international traffic the airport receives. Many airports probably do not have appropriate or enough space available to quarantine passengers and might have to use valuable space, renovate space or build new space for quarantining passengers. All of the options are costly and highly impractical.

In addition, the NPRM gives no inkling about what kind of services would need to be provided if passengers were quarantined on airport property. For example, would CDC be looking to the airport or its local government for law enforcement officials to assist in keeping the quarantine area secure? While organizations such as the American Red Cross would be likely to provide valuable assistance in caring for the quarantined passengers, would the airport and the airlines be expected to provide assistance? At whose cost? What about liability issues? In addition, if existing facilities were converted into quarantine areas in response to a particular situation, would the airport have to pay to have the space reconverted to regular airport use again?

The NPRM states that "...Each U.S. airport receiving international traffic shall provide without cost to the Government suitable office, examination, quarantine and other exclusive space...." However, there are U.S. airports whose only or main international traffic is cargo and therefore there is even less justification for such airports to provide space to CDC. In addition, there are

U.S. airports which are “user fee” airports, which have to pay U.S. Customs and Border Protection (CPB) to staff their airport because CBP deems their international traffic levels as too low to justify a CBP presence otherwise. The “user fee” airports are already stretched trying to pay for the CBP presence at their airports. If CDC insisted on implementing its requirements, such airports probably would lose their international air service which would result in a significant economic loss to their communities.

ACI-NA views the NPRM’s statement that “Finally, our Unfunded Mandates Reform Act analysis concludes that the proposed rule will not have any significant economic impact on State, local or Tribal governments” to be rather cavalier, given that airports may incur substantial construction costs to provide suitable examination and quarantine space, whether those facilities are used for days, weeks or even months, and may incur a wide variety of associated costs if passengers were actually quarantined at the airport for days, weeks or even months. The vast majority of commercial airports in the United States are owned and operated by state and local governments.

The NPRM is Confusing Regarding Proposed Airport Requirement

The little discussion of the proposed airport requirement in the NPRM is vague and confusing. On page 71911 of the Federal Register Notice, the NPRM states in order to be designated as an “international airport” under U.S. regulations, an airport must fulfill requirements established by the Secretaries of Commerce, Health and Human Services, Homeland Security and Transportation and points to the list of international airports at 19 CFR 122.13. Many of the largest U.S. international airports are “landing rights” airports, rather than “international” airports and some smaller airports are “user fee” airports. However, the NPRM calls for all U.S. airports receiving international traffic to provide suitable quarantine space.

In the same section, the NPRM also mentions that CDC's specifications for the space requirements to carry out quarantine activities are incorporated in the "Federal Inspection Service manual" and that it will coordinate closely with DHS on this subject. ACI-NA assumes this refers to the draft Airport Technical Design Standards (ATDS), which have not been issued yet. ACI-NA commented on the draft ATDS expressing a variety of concerns including with respect to CDC's "requirements." The draft ATDS we reviewed did not contain much information on CDC "requirements" except allusions to reception and isolation rooms. ACI-NA has also seen and expressed concern about the CDC's prototype design for a 400 square foot biohazard/examination/isolation room with negative air pressure which it wants included in international arrival areas. Therefore it is confusing that the NPRM refers to CDC's specifications for its quarantine activities. Presumably quarantining passengers would require significantly more space to accommodate a couple of hundred or more passengers than the 400 square feet for the biohazard/examination/isolation room even if the office space is included in the space available for quarantine. Or is CDC elsewhere stating that it wants to quarantine passengers in the international arrivals areas? This raises the concerns regarding contamination, functioning of the airport and financial issues raised earlier.

The NPRM is not very specific about who would be quarantined at airports. Would it only be air passengers or would airports also be required to find space for passengers on other modes of transport? There is no reference to seaports, railroad stations or any other transportation facility being required to provide quarantine space or any other space for that matter. We would strongly object if airports, airlines and their passengers have to provide office, examination, quarantine and other exclusive space for passengers, other individuals and other government functions, which have nothing to do with aviation.

ACI-NA is Also Concerned about CDC's Proposed Expanded Data Collection

ACI-NA believes that CDC's proposal to collect more personal information on air passengers should be reconsidered given that it does not appear to have been well coordinated with the aviation industry, other federal government agencies or international organizations.

ACI-NA is concerned that the proposed requirement on the airlines to collect additional data will result in passengers having to arrive earlier for their flights, in longer lines in the check-in areas of the airport and potential use of portable workstations, mentioned in the NPRM. These likely results would lead to an increased burden on airport check-in areas and departure lounges, many of which are already congested.

CDC should work with other federal agencies to access the substantial and increasing amount of information on air passengers already being collected before creating yet another reporting requirement. In addition, some of CDC's proposed data elements probably will raise privacy issues for foreign governments and could place airlines in the untenable position of having to conform to contradictory regulations. For example, the Department of Homeland Security has experience in dealing with the privacy concerns of the European Union. It is our understanding that the Air Transport Association, International Air Transport Association have been working with the CDC and World Health Organization on ways to contact passengers should there be a need to do so. A unified approach probably would have the advantage of being a targeted response to an unusual situation and of being an internationally accepted approach to a global issue.

Conclusion

ACI-NA strongly urges the CDC to withdraw its proposed requirements regarding examination and quarantine space at U.S. airports because airports are not the appropriate place for such facilities and because CDC's demands for cost-free space outstrip its statutory and

constitutional authority. We also recommend that CDC revisit its proposal to obtain personal data on air passengers and seek a more focused way to meet its occasional need for information to locate passengers in case of a potential serious communicable disease.

ACI-NA and its U.S. member airports remain very interested in working with CDC and other government and industry partners to develop appropriate procedures for dealing with the potential quarantine and other serious communicable disease situations.

Respectfully submitted,

A handwritten signature in black ink that reads "Diane D. Peterson". The signature is written in a cursive style with a long, sweeping underline.

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