

qrulepubliccomments

From: asackler@interactivetravel.org
Sent: Wednesday, March 01, 2006 6:10 PM
To: qrulepubliccomments@cdc.gov.
Subject: Comments on Control of Communicable Diseases Rulemaking
Attachments: ITSA Comments to CDC Rulemaking 030106.pdf

Please find attached the comments of the Interactive Travel Services Association concerning the rulemaking on Control of Communicable Diseases.

Thank you.

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3/2/2006

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

Control of Communicable Diseases

Notice of Proposed Rulemaking
re 42 CFR Parts 70 and 71

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) **Q Rule**
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**COMMENTS OF
INTERACTIVE TRAVEL SERVICES ASSOCIATION**

Comments on this document can be addressed to:

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**COMMENTS OF
INTERACTIVE TRAVEL SERVICES ASSOCIATION**

The Interactive Travel Services Association (“ITSA”) hereby submits these comments in response to the Department’s November 30, 2005, Notice of Proposed Rulemaking issued in this proceeding, 70 Fed. Reg. 71892 (November 30, 2005). In its NPRM, the Centers for Disease Control and Prevention (CDC) proposes to update its regulations related to the introduction, transmission and spread of communicable diseases into the United States and between States. ITSA’s members support CDC’s mission to ensure public health. We have particular interest in the NPRM’s enhanced requirements for collection of airline passenger data and urge CDC to work cooperatively with ITSA members and other industry and government officials to achieve its mission in a reasonable, cost-effective way.

I. Overview

ITSA represents the interests of online travel distribution companies in the United States and the four major global travel distribution systems. ITSA's members are Amadeus, Cendant, Expedia.com, Sabre Holdings, Priceline.com, Vegas.com and Worldspan. The ITSA members include such popular wholly-owned online travel companies as CheapTickets, Hotels.com, Hotwire.com, Orbitz, Site59 and Travelocity.

Online travel is an e-commerce success story, and ITSA's online travel company members are the leaders in this space. Through innovative technology and superior customer service, online travel companies have offered consumers access to unprecedented travel and tourism options and furnished suppliers with opportunities to distribute their products widely, creatively and at low cost.

Global Distribution Systems (GDS), also known as Computer Reservations Systems (CRS), automate online and offline travel merchants and are critical participants in the travel distribution chain. Some GDS companies also have commercial agreements with airlines through which they host the internal reservations systems of those airlines. ITSA will not be commenting in this proceeding from the perspective of the hosting businesses of its GDS members, but rather will concentrate on issues of interest to our members in their role of providing airline distribution solutions through travel agencies worldwide.

ITSA's interest in this proceeding stems from the significant role its members play in collecting and storing airline passenger data. Online travel companies, just like bricks-and-mortar travel agencies, collect and transmit passenger data when making airline reservations. GDS companies receive and store passenger reservations received from travel agents and transmit them to airlines. Any new information requirements imposed by CDC on airlines could

have a significant impact on ITSA members, requiring reprogramming and changes in automation processes, which come at significant cost. These costs must be more carefully assessed in the course of this rulemaking.

ITSA supports the CDC and its mission to protect all Americans from the spread of communicable illnesses through air travel. In addition to the obvious benefits to public health, the business interests of ITSA members are also aligned with CDC's mission. Our industry was deeply affected by the reduction of travel from Asia that followed the SARS outbreak in 2002, and we're mindful of the potential for significant impact to all aspects of the travel business in the event of a similar outbreak – or the threat of an outbreak – in the future.

While we are motivated by the importance of CDC's mission, ITSA has a number of areas of concern and respectfully submits these comments on the aspects of data collection in connection with the NPRM.

II. ITSA's Comment on the Incremental Costs to Industry of Data Collection

ITSA believes the financial and operational burdens imposed by CDC's proposed requirements in this area must be fully considered. As proposed in the NPRM, the burden of protecting the public at large from communicable diseases will fall solely on the air travel industry. One industry should not be asked to shoulder this burden – this is a national problem that impacts all citizens of the United States, not just the air travel industry and its customers. Ultimately, the responsibility for protecting the citizens of the U.S. should lie with the federal government, which should bear the costs associated with implementing a solution.

CDC's requirements for passenger data come as the air travel industry is already grappling with demands for similar data from other agencies within the federal government as

well as foreign governments. ITSA strongly urges CDC to work with those agencies, as well as with industry, to develop and propose standardized solutions that achieve CDC's mission without imposing unnecessary or duplicative costs on airlines, GDSs and travel agencies.

Based on the analysis presented in the NPRM and the associated Regulatory Impact Analysis, ITSA members feel that the CDC could better achieve its goals using the Point of Departure (POD) scenario rather than the Point of Sale (POS) scenario. Collecting data at the point of departure instead of the point of sale has a number of advantages. One of fundamental components of public health's response to the report of a person with a communicable disease is the identification and evaluation of those who may have been exposed. Information collected at the reservation stage of the air travel process does not give an accurate indication of persons who may have actually been on a particular flight and, in the event of an outbreak, potentially exposed to a communicable disease but rather reflects passengers who may have had an intent to travel on a particular date and on a particular flight. Reservations are frequently changed or cancelled; passengers routinely get the airport and take earlier or later flights. Information collected in connection with the booking of one flight may be applicable to only the initial flight booked. Information collected by passengers at POD is more up-to-date and accurate with respect to passengers actually on a particular flight and therefore better serves the purposes intended by the CDC. Notifying passengers who may have had a reservation on a particular flight will not prevent the detection or inhibit the spread of a communicable disease, notifying the passengers actually on an airplane where there may have been exposure to a communicable disease is much more useful to the CDC. The only way to get accurate passenger information is at the airport. In addition, there is increased potential for more passengers to provide their personal information POD and for that information to be more current and accurate on the day of

departure than in the POS scenario. At the POS, travelers – or their travel agents – may not have access to all the information requested by CDC readily available at the time of reservation. For example, travelers rarely carry their passports in the U.S. nor do they always know their destination information at the time a flight reservation is made. In that case the agent may provide inaccurate information or no information at all, such as entering a contact phone number of 999-999-9999 or outdated contact information. Despite good intentions, passengers or agents often won't go back to correct the data. At the airport, however, under the POD scenario, airline counter agents or federal designees can present provision of the information as a critical step in checking in for a flight. Even if it isn't required, travelers can be strongly encouraged to provide the data before their boarding pass is issued. For example, travelers are asked at the gate for contact information when traveling on international flights.

In addition, certain information, such as actual seat location and the names of passengers on a particular flight, can only be obtained from an airline's check in system at the airport. CDC has suggested that receiving accurate seat assignment information for passengers is critical in determining the impact of an illness on an airplane. Travel agents and GDSs do not have access to final seat assignments or the actual passenger manifest– only the airlines can provide them based on assignments, often made at the airport.

Notwithstanding ITSA's support for the POD scenario, ITSA's comments in this proceeding are applicable to either the POD or POS scenario.

III. CDC Should Consider Less Costly, Incremental Steps to Achieve its Objectives

Rather than implementing the comprehensive data collection proposal outlined in the NPRM, ITSA encourages CDC to consider alternative approaches that would represent significant improvements over CDC's current systems.

In its NPRM, CDC does not mention at all its Passenger Locator Cards – developed through the World Health Organization to track passengers. The mere establishment of these cards, which would be distributed and collected by airlines in the event of an outbreak, is a dramatic step forward for CDC. Standardized forms can be filled out by passengers, collected, scanned and analyzed in a manner far more systematic than was the case during the SARS outbreak. ITSA understands that CDC's Passenger Locator Cards have recently been deployed to air carriers and could be used at any time. Before taking on the ambitious and expensive program outlined in the NPRM, we encourage CDC to evaluate the effectiveness of these cards in achieving its public health objectives.

ITSA urges CDC to also consider a policy in which airlines would transmit to CDC the passenger information they currently collect, without any new requirements for collecting additional data. While perhaps not as comprehensive as the data CDC hopes to receive, airlines and agencies do currently collect contact information for passengers that would be useful to CDC. This approach would also represent a great step forward in helping CDC achieve its mission, giving the agency electronic access to the data that today is only available in paper form.

While these steps may not provide CDC the comprehensive solution it seeks, they do provide significant incremental improvement over today's processes at a lower cost to industry. ITSA again encourages CDC to work with our members, as well as the airlines, to discuss these and other lower cost solutions.

IV. With Respect to Data Collection, ITSA Believes that the CDC Should Work With The Department Of Homeland Security And Other Government Agencies To Consolidate And Coordinate Government Requests For Passenger Data

In issuing its NPRM, CDC joins a host of other U.S. and foreign government agencies that already require or have proposed requiring the collection and transmission of airline passenger information collected at the point of sale. These agencies require or may require different information transmitted in a different form at different times – each at a substantial cost to the airlines and ITSA members that work with them since each requires a different technological and administrative process to collect and transmit such information. The lack of coordination between CDC and sister agencies with respect to the collection and transmission of passenger information is a deficiency that CDC should cure, as discussed further below.

Within the Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) requires that airline passenger information be submitted in advance of international flights to the U.S. The Advanced Passenger Information System (APIS) program administered by CBP is already in place and is currently evolving. The required elements for APIS were expanded in 2005, and CBP has proposed requiring airlines to terminate passenger processing one hour prior to scheduled departure and submit APIS data 60 minutes prior to scheduled flight departure time (APIS-60). In place of APIS-60, CBP is reportedly considering a program called APIS Quick Query, in which passenger information would flow to CBP for vetting earlier than 60 minutes before departure without disrupting the departure schedules of airlines. Similarly, the Transportation Security Administration (TSA) is developing the Secure Flight program. While the parameters of this program have not been defined, we understand that

it is possible that certain passenger information would have to be provided to TSA as early as 72 hours before a flight for vetting against terrorist watchlists.

In addition to U.S. government programs requiring airline passenger data, governments around the world have imposed, or are considering, requirements in this area. The Canadian government has implemented the Advance Passenger Information/Passenger Name Record (API/PNR) program, and a similar program has been implemented in Australia. The United Kingdom is implementing an enhanced eBorders program, and many other nations are considering similar requirements.

Within the United States, there are significant differences in the approaches of the DHS agencies – CBP and TSA – and that outlined in CDC’s NPRM. CBP and TSA do or would receive passenger data in advance of a flight, while CDC proposes to have air carriers maintain passenger information for up to 60 days after the passenger’s last flight. As outlined in the preamble to the NPRM, CDC also would require collection of significantly more data from passengers than is collected today under APIS or is contemplated under Secure Flight.

We understand that TSA and CBP may be undertaking discussions to coordinate – if not consolidate – their needs for passenger data. Before it proceeds with implementing the approach outlined in the NPRM, CDC should work with those agencies to achieve common solutions. The Memorandum of Understanding signed by DHS and the Department of Health and Human Services (HHS) in October 2005 should provide a vehicle for discussions between the agencies. ITSA encourages DHS and HHS to move beyond their initial plans for data sharing on a case-by-case basis to develop and implement a comprehensive solution that achieves CDC’s public health objectives, while minimizing the impact on industry.

In early 2006, the International Air Transport Association hosted the first meeting of its Passenger Contact Information Working Group. This group was formed to address the many government mandates for passenger information from around the world, including CDC's NPRM. We encourage CDC and the other governmental bodies considering mandates for passenger information to continue to work with this group or others in industry to establish standards for collection, retention and transmission of the data. This has the potential to avoid the considerable cost to airlines, GDSs, travel agents, and others of implementing different passenger information requirements that vary from nation to nation, or even agency to agency in the United States. U.S. and foreign governments should support any industry efforts and allow sufficient time for them to establish worldwide standards. ITSA members seek to avoid the cost of programming multiple variations to send data based on different receiver requirements.

In short, ITSA contends that airlines, GDSs and travel agents should not be required to implement different solutions, with different data requirements and methods of transmission, to meet a variety of U.S. government demands for passenger information. We strongly urge CDC to work with the other agencies, as well as with industry, to develop and propose standardized solutions that minimize cost while achieving critical objectives.

Finally, given the potential worldwide nature of disease outbreaks that have led CDC to propose its rule, ITSA submits that CDC should coordinate its proposed approach with relevant international bodies. The International Civil Aviation Organization and/or WHO may provide the most appropriate international forums through which a standardized approach may be taken by interested governments so that airlines and their vendors worldwide can avoid being subject to overlapping and inconsistent data collection/transmission demands.

V. CDC Must Carefully Consider The Privacy Implications Of Its Proposal And Act To Reach International Data Protection Agreements

While ITSA supports the CDC's goals related to spread of communicable illnesses through air travel, we are mindful of the implications of collecting, maintaining and transmitting passenger information to government agencies. CDC must weigh the importance of receiving passenger data against the privacy rights of those affected by the NPRM – not only travelers, but also friends and family who would be listed as an emergency contact for those travelers. We encourage CDC to seek the appropriate balance between these conflicting interests as it develops its plans for management of the information it may receive and the retention of the confidentiality of that information.

Further, the CDC should not implement any final rule that requires the collection and transmission to CDC of passenger data with respect to flights between the U.S. and any nations that have data protection regimes which restrict the collection, storage and transmission of such data until appropriate international data protection agreements are in place. Notably, the European Commission maintains a data protection directive (Directive 95/46/EC) which imposes restrictions on the collection and transmission of personal data on an individual in the absence of unambiguous express consent from the individual or certain other circumstances defined in the Directive. Airlines operating to/from European Union nations are subject to the Directive.

It bears note that in the face of European Commission concerns that the collection of data on airline passengers by CBP through the APIS program would violate the EC Directive, the U.S. and EC negotiated and entered an agreement on May 28, 2004 that concerns the collection and transmission of PNR data through CBP's APIS program. In the absence of such an agreement, U.S. and European airlines flying between the United States and Europe could have been subject to penalties in the U.S. if they had failed to adhere to APIS requirements or

penalties in Europe if they had done so in violation of the EC Directive. Likewise, the seemingly conflicting requirements of different nations raised legal questions for GDSs and other entities involved in the storage and transmission of data. Accordingly, an agreement was essential to remove legal uncertainty and to reconcile U.S. Government data demands with the EC Directive.¹

The US-EC Agreement, a copy of which is attached, sets forth a variety of conditions and protections relating to CBP's collection, transmission and storage of passenger data that are designed to meet the requirements of the EC Directive. The specific undertakings agreed by CBP in connection with the US-EC Agreement were published by CBP in the Federal Register on July 9, 2004 at 69 Fed. Reg. 41513. These undertakings address in detail matters such as limitations on access to the data made available to CBP, computer security, destruction of obsolete data, applicability of FOIA requests to PNR data, the handling of complaints and sharing data with other government offices.

Were CDC to go forward with any type of data collection requirement applicable to U.S.-EU flights, the same types of problems that led to the agreement concerning APIS data would emerge. Accordingly, no such requirement should be implemented without full consideration being given to the EU Directive (and similar data directives of other nations) and, as necessary, until appropriate international agreements are in place similar to that entered in connection with the APIS program. In this regard, ITSA understands that neither the "voluntary" nature of the proposed CDC data collection program nor the health-related reasons for the data collection necessarily removes the proposed data collection program from the reach of the EC Directive.

¹ The lawfulness of the US-EC Agreement is currently being challenged by the European Parliament in the European Court of Justice. The challenge alleges that U.S. protections for the airline data are inadequate to meet the demands of the EC Directive.

Accordingly, ITSA urges CDC to consult with the EC on its proposed program and address any EC concerns prior to implementation.

VI. Additional Analysis is Necessary to Determine the True Costs of CDC's Proposal.

ITSA questions the accuracy of CDC's cost estimates as to the impact of the NPRM on airlines, GDSs and travel agencies. In a rough survey of our members, we found wide differences in their evaluation of the anticipated costs of implementing the POS scenario. Airline, GDS and travel agency systems are unique and complex; further analysis is required to determine the true cost impact of these proposals. But this diversity of opinion, as well as the fact that no GDS members were contacted by CDC or its consultant as they prepared their cost estimates, suggests that additional work is required.

In addition, some ITSA members believe that GDSs and travel agencies would incur significant costs whether CDC mandates a POD or POS scenario. While the government may require a POD solution, it's possible that airline and market pressures will force the collection downstream to earlier in the reservation process. In this case, GDSs and online travel agencies will need to modify their systems and operating procedures and provide the ability for travel agency subscribers to enter the data.

Finally, even if CDC, DHS and the other relevant agencies were to establish a single standard for these programs, airlines, GDSs and travel agencies are subject to significant costs in complying with these mandates. CDC and DHS should reimburse the industry for the costs of these mandates, since the burden disproportionately and unfairly falls on one industry to protect the population at large.

VII. Collecting Passenger Data Exclusively for CDC is Unrealistic

CDC proposes that information collected in order to comply with its proposed regulation may only be used for purposes related to CDC, and that passengers should be informed of the purposes of this information collection at the time passengers arrange their travel. 70 Fed. Reg. 71931 and 70 Fed. Reg. 71940. While some of the data elements requested by CDC are unique (for example, passport or travel document information), in the sense that they are not collected today as a matter of routine, others such as current phone numbers (mobile, home, pager and work) and email addresses are today are collected by airlines and other members of the travel industry and used for multiple purposes. For example, airlines and online travel agents collect current phone numbers and email addresses to provide up-to-the-minute travel information to their customers. Imagine a scenario where John Smith makes a reservation with a travel agent, and is asked to provide his phone number and email address so that he can be contacted in case of a schedule change. Agents should not be required to request the same information multiple times or to explain why information is being requested when it is used for both commercial/operational needs and to meet CDC and/or other regulatory requirements. Separately requesting the same information over and over again would result in unnecessary burden and inconvenience to both the traveler and the travel agent.

Further, if CDC adopts its proposed rule, it cannot realistically limit the use of that information to only CDC when the information is collected or needed for other reasons as well. CDC's interests should instead be focused on the retention of the privacy of any data that it receives from airlines and other sources, consistent with the demands of the Privacy Act and any obligations that CDC may undertake pursuant to international agreements.

VIII. Other Issues for CDC to Consider

Data Storage

In an apparent effort to reduce the privacy implications of its proposal, CDC's approach would have airlines maintain the needed passenger data up to sixty days following the last flight in a Passenger Name Record (which can contain an itinerary over 300 days long). While the goal of not sharing the data with the government unless it is needed is laudable, this approach is inconsistent with other government mandates and will add storage and retrieval costs to airlines.

To the extent that CDC chooses to move forward with this approach, ITSA urges CDC to clarify that it is the airlines that have the obligation to retain and maintain this data. In this scenario, GDSs and travel agencies act only as processors and a vehicle for collecting and transmitting the data for airlines, and should have no storage obligations.

Additionally, in the event CDC chooses the POS scenario, we urge CDC to emphasize that travel agents and GDSs have no obligation to validate the information provided by passengers. In the preamble to its NPRM, CDC says that airlines are not required to validate the information. ITSA requests that the same standard be applied to GDSs and travel agencies.

IX. A Cooperative Approach Would Best Serve the Interests of CDC, the Industry and the Public

As noted above, ITSA strongly urges CDC to work with CBP, TSA, and other U.S. and international agencies as it moves forward with this proceeding. CDC's goals can be best achieved if it takes advantage of the passenger information programs already in place or in development.

CDC should also engage in active discussions with the industry – with GDSs and travel agencies as well as with airlines. ITSA members have unique expertise in developing and

managing airline systems and in the interaction between passenger data collection and government information requirements. Their experience, as well as the products they have developed to manage airline data, would be beneficial to CDC. ITSA and its members look forward to working with CDC in this important endeavor.

Respectfully submitted,

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March 1, 2006

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 17 May 2004

on the conclusion of an Agreement between the European Community and the United States of America on the processing and transfer of PNR data by Air Carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection

(2004/496/EC)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof, in conjunction with the first sentence of the first subparagraph of Article 300 (2) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) On 23 February 2004 the Council authorised the Commission to negotiate, on behalf of the Community, an Agreement with the United States of America on the processing and transfer of PNR data by Air Carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection.
- (2) The European Parliament has not given an Opinion within the time-limit which, pursuant to the first subparagraph of Article 300(3) of the Treaty, the Council laid down in view of the urgent need to remedy the situation of uncertainty in which airlines and passengers found themselves, as well as to protect the financial interests of those concerned.
- (3) This Agreement should be approved,

Article 1

The Agreement between the European Community and the United States of America on the processing and transfer of PNR data by Air Carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the European Community.

Done at Brussels, 17 May 2004.

For the Council
The President
B. COWEN

A REEMEN**between the European Community and the United States of America on the processing and transfer of PNR data by air carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection**

THE EUROPEAN COMMUNITY AND THE UNITED STATES OF AMERICA,

RECOGNISING the importance of respecting fundamental rights and freedoms, notably privacy, and the importance of respecting these values, while preventing and combating terrorism and related crimes and other serious crimes that are transnational in nature, including organised crime,

HAVING REGARD to US statutes and regulations requiring each air carrier operating passenger flights in foreign air transportation to or from the United States to provide the Department of Homeland Security (hereinafter 'DHS'), Bureau of Customs and Border Protection (hereinafter 'CBP') with electronic access to Passenger Name Record (hereinafter 'PNR') data to the extent it is collected and contained in the air carrier's automated reservation/departure control systems,

HAVING REGARD to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and in particular Article 7(c) thereof,

HAVING REGARD to the Undertakings of CBP issued on 11 May 2004, which will be published in the Federal Register (hereinafter 'the Undertakings'),

HAVING REGARD to Commission Decision C (2004) 1799 adopted on 17 May 2004, pursuant to Article 25(6) of Directive 95/46/EC, whereby CBP is considered as providing an adequate level of protection for PNR data transferred from the European Community (hereinafter 'Community') concerning flights to or from the US in accordance with the Undertakings, which are annexed thereto (hereinafter 'the Decision'),

NOTING that air carriers with reservation/departure control systems located within the territory of the Member States of the European Community should arrange for transmission of PNR data to CBP as soon as this is technically feasible but that, until then, the US authorities should be allowed to access the data directly, in accordance with the provisions of this Agreement,

AFFIRMING that this Agreement does not constitute a precedent for any future discussions and negotiations between the United States and the European Community, or between either of the Parties and any State regarding the transfer of any other form of data,

HAVING REGARD to the commitment of both sides to work together to reach an appropriate and mutually satisfactory solution, without delay, on the processing of Advance Passenger Information (API) data from the Community to the US,

HAVE AGREED AS FOLLOWS:

- (1) CBP may electronically access the PNR data from air carriers' reservation/departure control systems ('reservation systems') located within the territory of the Member States of the European Community strictly in accordance with the Decision and for so long as the Decision is applicable and only until there is a satisfactory system in place allowing for transmission of such data by the air carriers.

