

**qrulepubliccomments**

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**From:** Gosain, Carol [CGosain@steptoe.com]  
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**To:** qrulepubliccomments  
**Subject:** CDC NPRM on Control of Communicable Diseases, HHS-2006-0013  
**Attachments:** JAL Comments.pdf

Attached please find comments of Japan Airlines International Co., Ltd. on the above-referenced proposed rule.

<<JAL Comments.pdf>>

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3/2/2006

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

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In the Matter of )

**Control of Communicable Diseases** )

Notice of Proposed Rulemaking )  
re 42 CFR Parts 70 and 71 )

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**HHS-2006-0013  
RIN 0920-AA03**

**COMMENTS OF  
JAPAN AIRLINES INTERNATIONAL CO., LTD. (“JAL”)**

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March 1, 2006

**BEFORE THE  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
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**COMMENTS OF  
JAPAN AIRLINES INTERNATIONAL CO., LTD. (“JAL”)**

**I. INTRODUCTION**

JAL hereby submits these comments in response to the Notice of Proposed Rulemaking (“NPRM”) issued by the Centers for Disease Control and Prevention (“CDC”) on November 30, 2005 proposing to amend the CDC’s rules in 42 CFR Parts 70 and 71, which relate to preventing the introduction, transmission or spread of communicable diseases.<sup>1</sup> As pertinent to JAL, the NPRM would amend Part 71 to impose on foreign air carriers certain new data solicitation, data retention, reporting and other requirements intended to assist CDC in containing an outbreak of an infectious disease.<sup>2</sup>

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<sup>1</sup> 70 Fed. Reg. 71892 (Nov. 30, 2005).

<sup>2</sup> JAL is a member of the International Air Transport Association (“IATA”), which is filing comments in this docket. JAL supports the positions taken by IATA. Accordingly, the comments herein should be viewed as supplementary to those submitted by IATA.

JAL fully supports the CDC goal of crafting appropriate and workable regulations to aid governmental authorities in preventing the spread of communicable diseases. JAL is committed to taking all reasonable steps to assist CDC and other governmental authorities in carrying out their responsibility to protect public health. For example, JAL already works with U.S. Public Health Services personnel to make them aware of deaths or seriously ill persons aboard JAL's flights to the United States. JAL also follows internationally-accepted principles in determining whether to deny boarding to persons who appear to be sick. As an Asian airline, JAL knows only too well the devastating impact that an outbreak can have not only on public health and confidence but also on airlines. During the SARS outbreak, JAL, like other Asian airlines, suffered significant losses representing many millions of dollars.

JAL is pleased to submit these comments on the NPRM, with a view toward making the proposed regulations more practicable and effective. In this regard, JAL applauds CDC for soliciting input from and meeting with representatives of the airline industry. JAL urges CDC to continue working with the industry to fashion regulations that will best implement CDC's objective to protect public health.

JAL has the following comments on specific proposals in the NPRM:

## **II. COMMENTS ON PROPOSED SECTIONS**

### **A. Proposed Section 71.1, Scope and definitions.**

JAL generally supports the definitions in proposed section 71.1 and has a comment on only one. JAL notes that the proposed definition of "ill person" is extremely broad. While JAL crewmembers are not medical professionals, if a passenger shows visual signs of being seriously ill (e.g., rash, loss of consciousness, or severe bleeding), JAL crewmembers are able to detect that the passenger is ill and to take appropriate action, which may include reporting the person to

governmental authorities. But the proposed “ill person” definition goes beyond outwardly visible signs of serious illness to include, for example, a body temperature of 38 C (100.4 F) lasting for two days, or a body temperature of 38 C (100.4 F) combined with a headache and stiff neck, or swollen lymph nodes or glands. Clearly, absent verbal input from a passenger, crewmembers cannot be expected to notice that a passenger has a headache, stiff neck or swollen glands. Moreover, symptoms such as a low fever combined with a headache or stiff neck might very well indicate only a non-serious illness such as a common cold. Alternatively, such symptoms might be caused by other factors not related to illness, such as stress, dry air, lack of sleep and dehydration, all of which might occur on a long-haul international flight.

For these reasons, JAL urges the CDC to adopt an alternative definition of “ill person” that is more narrow in scope. Specifically, JAL recommends a definition that embraces a combination of fever and signs or symptoms of illness that are visible to a person who is not a medical professional.

**B. Proposed Section 71.6, Report of death or illness on board flights.**

This section would require airlines to report to CDC any deaths or ill persons aboard the aircraft. The breadth of the proposed “ill person” definition would seem to demand that crewmembers exercise discretion when making reports to CDC. Nonetheless, the proposed reporting requirement in section 71.6 is written in absolute terms. JAL is concerned that if airlines must comply with an unqualified requirement to report “any” ill persons, CDC would be inundated with reports that have no public health benefit and crewmembers would be constantly distracted from their numerous other safety, security and service related duties. JAL therefore requests that CDC either narrow the “ill person” definition along the lines proposed above or qualify the reporting requirement to reflect that the expansive “ill person” definition necessitates

the use of discretion by crewmembers in deciding which passengers to report. Similarly, JAL questions whether the requirement to report “any” deaths should be waived in cases where it is clear that the passenger did not die from a communicable disease.

Under proposed section 71.6, airlines would be obligated to make reports to CDC as soon as the pilot becomes aware of a death or ill person and, where possible, at least one hour before arrival. Such immediate reporting is possible only with aircraft that are equipped with an Aircraft Communication Addressing and Reporting System (“ACARS”). This system allows the crew to dispatch written messages to the port of arrival well in advance of arrival. However, not all of the aircraft in JAL’s fleet are equipped with ACARS. When operating an aircraft without ACARS, the crew relies on radio transmissions. Using radio transmissions, the earliest an ill person or death onboard the aircraft could be notified to CDC would be about 30 minutes before arrival.

**C. Proposed Section 71.7, Written plan for reporting of deaths or illness on board flights and designation of an airline agent.**

Proposed section 71.7 would mandate that carriers develop and submit to CDC a written plan for reporting deaths and ill persons aboard their aircraft. JAL requests that CDC provide additional information regarding the scope and specific details of the plans.

In addition, carriers would be required to designate one person as the airline point of contact concerning reports of deaths or ill persons. JAL is concerned that having a single point of contact for all issues arising in all cases involving the reporting of deaths or ill persons might delay essential communication and coordination. Currently, procedures have been established between U.S. Public Health Services personnel and the carrier community at the station or field office level. While these procedures may differ slightly from location to location, this system has proven to be effective over time.

**D. Proposed Section 71.10, Passenger information.**

The bulk of JAL's comments on the NPRM relates to proposed section 71.10. This section would require airlines (i) to solicit certain information from passengers and crewmembers, (ii) to ensure that passengers are informed of the reason for the information collection at the time they arrange their travel, (iii) to retain passenger and crewmember information for 60 days, and (iv) to transmit the information to CDC in electronic format within 12 hours after a CDC request. The data elements would include:

- (a) full name (first, last, middle initial, and suffix);
- (b) emergency contact information;
- (c) email address;
- (d) current home address;
- (e) passport number or travel document number, including the issuing country or organization;
- (f) name of traveling companions or group;
- (g) outbound and, if applicable, return flight information; and
- (h) at least one phone number (mobile, home, page or work, in order of preference).

These data elements go well beyond those that airlines are currently required to collect from passengers and crewmembers; of these eight data elements, only three are currently required by the U.S. government to be collected by airlines, i.e., name, flight information and passport or travel document number. Further, the proposed "flight information" data element is more expansive than the existing requirement. Under the CDC proposal, airlines would need to submit passenger seat numbers, which they are not currently required to do.

Proposed section 71.10 would impose enormous administrative, operational and financial burdens on JAL. JAL currently operates about 121 passenger flights per week that touch the United States. Reasonably assuming an average of about 325 passengers per flight, JAL serves roughly 40,000 passengers each week on flights that would be covered by the proposed rule. Collecting, processing and storing additional data on 40,000 passengers each week would significantly raise JAL's costs and prolong passenger check-in times.

JAL already submits information on its passengers to various agencies of the U.S. government through U.S. Customs and Border Protection ("CBP"). Currently, JAL passengers traveling to the U.S. via JAL's Japan gateways are directed to a designated counter prior to check-in for purposes of gathering or confirming the passenger manifest data that is required to be sent to CBP. In April 2005, CBP issued a final rule combining existing and proposed customs, immigration, and transportation security passenger and crewmember manifest requirements into a single CBP-administered program.<sup>3</sup> CBP also required airlines to convert to UN EDIFACT for purposes of transmitting the manifests to CBP. Moreover, CBP has access to passenger name records ("PNRs") through mandatory links with airline reservations systems.

As proposed, the CDC regulations would create a completely new and separate regime for passenger information collection and transmission, which would be administered by a different agency of the U.S. government. JAL strongly urges CDC to work with CBP to accomplish its goal of collecting passenger information. Any CDC rule that "reinvents the wheel" with respect to collection, transmission and retention of passenger data would be duplicative, needlessly inefficient and unduly burdensome. CDC should turn to CBP -- not the airlines -- as its primary source of passenger information. As noted, airlines are already required

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<sup>3</sup> See 70 Fed. Reg. 17820 (Apr. 7, 2005).



to submit to CBP some of the information that CDC seeks. Further, much of the remaining information, while not required to be submitted to CDC, could be gleaned from PNRs, to which CBP already has access.

To ensure that CDC receives all of the information it needs and to relieve the burden on airlines and passengers, JAL supports use of the U.S. customs declaration form to collect the information. In explaining the need for the proposed rule, CDC states at page 71914 that the current form does not include requests for all of the desired information and that the declarations are completed manually by the passenger and are often illegible. JAL recommends amending the form to include a request by the U.S. government for the information sought by CDC. U.S. customs agents, who are present at all international airports where passengers arrive from foreign destinations and who already interact with such passengers, could collect the amended forms. If a form is illegible, the customs agent could ask the passenger to complete a new form. This method of information collection would significantly increase compliance as compared to an airline request for the information. Further, unlike the proposal to require airlines to collect passenger information, this method would not impose a significant cost burden on the struggling airline industry and would not substantially extend passenger check-in times.

CDC also states that existing manifests and customs forms are inadequate because the data “frequently takes several days to obtain. Data must then be keyed into a database. Entering the data and verifying addresses may take several more days.”<sup>4</sup> The solution proposed in the NPRM is to shift the burden of data collection, entry, transmission and retention from the U.S. government to airlines. JAL strongly supports CDC’s efforts to prevent the outbreak of a communicable disease and wishes to assist CDC in these efforts; nonetheless, with respect to

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<sup>4</sup> 70 Fed. Reg. at 71914.

data collection, JAL believes that CDC's objectives can better be accomplished if the government solicits the information from passengers.

If CDC ultimately decides that airlines must solicit, retain and transmit passenger and crewmember information, JAL urges CDC to explore and implement procedures that will lessen the burden on airlines. Modifying JAL's reservations system to accommodate the data collection and retention requirements in the NPRM would require a huge investment. Further, collecting the passenger information verbally by questioning passengers and entering the information in JAL's reservations system would substantially increase passenger processing time at check-in and would require additional JAL staff and facilities at the airport. To keep the burden on JAL and its passengers manageable, JAL sees no viable option but to gather the data manually at the point of departure by asking passengers to complete a form reflecting the data elements. The forms would be collected and held for the mandated 60-day period. Upon request by CDC, the forms would be transmitted via email to CDC.

Airlines should also be permitted to transmit information using the CBP-mandated window and UN EDIFACT standard. Airlines have already been required to make substantial investments to establish interfaces with CBP and to comply with UN EDIFACT protocols. They should not be required to use different interfaces and standards to transmit passenger information to another agency of the U.S. government. JAL urges coordination with CBP in this regard.

The proposed requirements in section 71.10 also raise privacy and security concerns for passengers and crewmembers, as well as the potential for conflict with foreign privacy laws. Many passengers and crewmembers are concerned about releasing personal and confidential information. In this regard, JAL requests that CDC confirm that the data elements are optional for crewmembers as well as passengers, as not all of JAL's crewmembers would be comfortable

disclosing personal information, such as their personal email addresses. Further, most of JAL's passengers are boarding long-haul, international flights and will be away from home for days, if not weeks or more. JAL would expect many such passengers to be apprehensive about providing their home address while they will be out of the country. Additionally, JAL requests that CDC make clear in any final rule in this proceeding that airlines are not guarantors of the accuracy and completeness of information provided to them by passengers and will not be penalized for inaccurate or incomplete information provided by passengers.

JAL is concerned about how airlines would demonstrate compliance with the data solicitation requirement of proposed section 71.10 in cases where passengers simply refuse to provide the information. It is JAL's understanding that under the proposed rule the provision of information would be voluntary, i.e., passengers would have the right to refuse to provide the information, and airlines would not be required to deny boarding to such passengers. Would it be sufficient for airlines to hand every passenger a form reflecting the data elements and to collect the forms from those passengers who choose to fill them out? Or would airlines need to make a record for each passenger who refuses to provide the information? If so, how long would airlines need to keep such a record? Obviously, requiring airlines to record passenger refusals and to keep such records would substantially increase the burden on airlines, in terms of the personnel, time, technology and storage space required to comply with the rules.

With respect to proposed section 71.10(i), JAL has no objection to a requirement that airlines ensure that passengers are informed of the purposes of an information collection at the time they arrange their travel, so long as the airline is making the arrangements. However, when another entity is making the travel arrangements, JAL respectfully submits that it is neither feasible nor fair to obligate airlines to ensure that passengers are informed of the purposes of the

information collection at the time they arrange their travel. Airlines should not be held responsible and subjected to potential penalties if other sellers of air transportation, such as travel agents, fail to inform passengers of the reason for a data collection.

JAL's overall observation with respect to proposed section 71.10 is that it reflects a heavy focus on airlines, to the exclusion of other pertinent entities. For example, CDC proposes a point of sale data collection scenario but imposes no obligation on other sellers of air transportation such as travel agents to solicit passenger data. Similarly, as discussed above, CDC proposes to make airlines -- but not travel agents -- responsible for informing passengers of the reason for the data collection at the time they arrange their travel. Also, CDC proposes to impose on airlines an entirely new data collection, retention and transmission requirement, when much of the information is already made available to its sister agencies and in any event could more effectively and efficiently be collected through them. Finally, JAL notes that the NPRM covers airline and cruise ship arrivals into the U.S. but does not address surface travel and border procedures.

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JAL strongly supports CDC's goal of containing the outbreak of a communicable disease and appreciates the importance and urgency of CDC's mission. JAL urges CDC to continue working with the industry in a cooperative effort to develop the best means for CDC to carry out its mission. JAL appreciates this opportunity to comment on the NPRM.

Respectfully submitted,



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