

qrulepubliccomments

From: Paul Doell [pdoell@naca.cc]
Sent: Wednesday, March 01, 2006 1:30 PM
To: qrulepubliccomments
Subject: National Air Carrier Association Comments For CDC NPRM
Attachments: NACA Final Comments on CDC NPRM.pdf

Please find NACA's comments concerning the CDC's NPRM on communicable diseases. If there are any problems with the attachment, please feel free to contact me.

Paul H. Doell
Director of Government Affairs
National Air Carrier Association
1000 Wilson Blvd.
Suite 1700
Arlington, VA 22209
Direct Phone: (703)358-8062
Fax: (703)-358-8070
www.naca.cc

3/1/2006



**NATIONAL AIR CARRIER
ASSOCIATION**

1000 Wilson Blvd., Suite 1700
Arlington, VA 22209
Ph: (703) 358-8060 Fax: (703) 358-8070

March 1, 2006

Centers for Disease Control and Prevention
Division of Global Migration and Quarantine
1600 Clifton Road, N.E. (E03)
Atlanta, GA 30333

Re: Control of Communicable Diseases NPRM

To whom it may concern:

The National Air Carrier Association (NACA), on behalf of its passenger member airlines¹, submits the following comments concerning the Centers for Disease Control and Prevention's (CDC) Notice of Proposed Rulemaking (NPRM) which would change its requirements for how airlines handle the outbreak of communicable diseases and the information they collect from the public to minimize the effect of a pandemic outbreak.

General Comments

NACA carriers understand the significant concerns both the United States and the international community have with regard to the outbreak and spread of communicable diseases. The globalization of the world's economies and the ease with which people can travel great distances can spread an outbreak of a disease in a particular part of the world quickly to many other areas. We agree that the aviation industry needs to be a partner in helping to minimize the spread of disease, whether the outbreak is naturally occurring or intentionally caused by terrorist.

In general, the preamble to this proposal outlines the problems public health officials face in dealing with the spread of a dangerous diseases such as SARS, Avian Bird Flu, and West Nile Virus. Because of the complexity of these diseases and the symptoms they can cause, we agree it is imperative that all the parties that may have to deal with these outbreaks have a clear understanding of the definitions which are not commonly used in the aviation industry. Thus, in general, we agree with the CDC's proposal to re-write 42 CFR Parts 70 and 71 to provide additional clarification on definitions and other issues that may not otherwise be familiar in aviation or the other modes of mass transportation. NACA and its members also commend and support the CDC in its efforts to distribute information on these issues. We are grateful for the

¹ NACA's members include: Allegiant Airlines, ATA Airlines, Champion Air, Falcon Air Express, Miami Air International, North American Airlines, Omni Air International, Pace Airlines, Ryan International Airlines, USA3000 Airlines and World Airways.

guidelines recently distributed to the aviation industry for education of our personnel and to assist us in communicating with the CDC.

Specific Comments:

Having separate, nearly identical language in Part 70, for “Interstate Quarantine” and Part 71 for “Foreign And Possessions Quarantine” appears redundant when both could be contained in a single part dealing with Interstate, Foreign and Possessions Quarantine.

Section 70.4 & 71.10. Data Requirements:

NACA and its members have significant concerns with and object to the new passenger data requirements this proposal would mandate at Sections 70.4 and 71.10 to the extent that they are over and above those international air transportation data already required by the Department of Homeland Security’s (DHS) Customs and Border Protection (CBP).

Rationale:

Over the past four years, we have worked diligently with the Departments of Transportation (DOT), DHS and their agencies to design information systems with added data fields and the connectivity to support that data exchange between the Government and stakeholders. On initial review by the uninformed, it may seem that the proposed passenger data requirements contained in this proposal are so similar to what is already required by CBP as to be insignificant. However, nothing could be further from fact, as the subtle differences in data requested by the CDC create significant, worldwide passenger name record issues.

First, the structure and electronic handling of computerized passenger name record (PNR) data must be strictly controlled worldwide in order for domestic and international customers, travel agents and ticket counter agents worldwide to have a common access to air transportation and for all security minded countries to gain access to the PNR data to control their borders. Any change to the structure and technical configuration of the existing PNR data system requires significant worldwide coordination. Agreed-upon changes must then be made in near simultaneous fashion in order to avoid catastrophic breakdown in communications. Furthermore, what may appear to the CDC to be a small addition to data collection and storage is actually very costly to implement. Over the past four or more years, the CBP and its stakeholders, including more than 500 U.S. and foreign airlines, have been at work on a significant change to PNR data requirements for homeland security purposes. Those changes to our computerized systems, including providing full time access for CBP to airline PNR data bases, have just recently been implemented at great expense to the industry. Adding these new required data changes now will be prohibitively costly and onerous.

Secondly, it will come as no great surprise to the CDC that there were significant privacy issues to be overcome with regard to gathering the added passenger information required for border protection. These issues go far beyond U.S. borders and have involved significant efforts by the Department of State to negotiate agreements with governments worldwide. We would point out that while the DOS was successful in those negotiations in coordinating changes to the CBP’s Automated Passenger Information System (APIS), the

Transportation Security Administration (TSA) has been unsuccessful in implementing a similar domestic passenger data collection system called Secure Flight. The TSA's Secure Flight has, in fact, been put on hold for significant privacy and data storage issues that are similar to these proposed CDC data requirements. Furthermore, beyond the public's privacy concerns, we believe the CDC underestimates the technical gap and economic impact between directing airlines to modify their current reservation databases and its actual accomplishment. Much of this obstacle will be on the CDC's side of the equation. To accommodate this proposed data requirements, the CDC must have the technical ability to send, receive and store data on demand. Given the sizeable concerns about the privacy of passenger records, CDC should not begin development of its quarantine reporting and passenger contact system without a fully articulated plan that includes system architecture and all operational policies, including development and coordination of a privacy policy for use and storage of PNR data.

A further, significant concern for NACA and its member airlines is that, even if this expensive and potentially onerous data requirement is implemented, there is no assurance the added data will be obtained, as the traveling public is not required to provide the information. The proposal states:

“Based in part on data from a public opinion survey, it is believed likely that passengers will voluntarily provide this information so that CDC could contact the passenger in the case of that passenger's exposure to a communicable disease. **However, passengers who decline to provide contact information will not be prohibited from traveling.**”

Public opinion survey notwithstanding, there is a similar, long established but optional National Transportation Safety Board requirement for airlines to encourage passengers to provide name and phone number of next of kin for disaster family assistance purposes should there be an accident. While airlines give them ample opportunity to do so, passengers rarely do provide the information. Given the growing public concern over Government surveillance and individual privacy, we believe it is most unlikely passengers will provide this information on a consistent basis, especially if it is considered optional.

Thus, the airline industry could spend millions of dollars to implement the additional data fields required by the CDC; could drastically alter their reservations computers in order to store the passenger data for an extended amount of time; and could risk wide-spread public criticism and potential litigation over privacy concerns (based on what has happened with TSA's Secure Flight and the CBP's Automated Passenger Information System program) without any assurance airlines will obtain the information the CDC seeks.

It also appears that CDC has a misunderstanding regarding how passenger air transportation is sold. This proposal's requirement for airlines to inform passengers of the purpose of the collection of information "*at the time passengers arrange their travel*" appears to assume that passengers always make their travel arrangements directly with an airline. On the contrary, many passengers arrange travel through travel agents, tour operators, and others that are not regulated. In many travel bookings, the airline has no communications with the passenger and little control over the interface with the passenger at the most advantageous time for collecting data. In fact, because the majority of NACA's member passenger airlines are charter airlines, most passengers who travel on NACA member airlines **never** make travel

arrangements directly with the airline. The sales are made by indirect air carriers and ticket agents. While those entities are required to provide the airline with a manifest, we do not store the detailed PNR data to the extent that CDC is requesting. Nor do we have PNR data bases, as such. We simply receive a manifest; process passengers against that manifest; and transmit required data for persons actually traveling to CBP via the APIS program. Additionally, ticket counter agents serving NACA member airline flights at airports are most often not direct employees of the airline. Thus, the first contact a passenger has with a direct carrier employee of a NACA member airline is most often when the flight attendant meets the passengers at the airplane door during boarding.

Under F(1) of the preamble, the CDC notes that commercial air carriers are classified according to the size of the aircraft and type of service provided. Airlines operating aircraft with more than 60 seats are classified as large certificated carriers, and further distinguished as major, national, and regional according to annual revenues. We recognize these as Department of Transportation categories that have been used for different regulatory or data gathering purposes in the past. However, while NACA carriers operate large aircraft and are considered “national” carriers, there is an additional definition of more importance in this regulatory proposal. NACA’s member airlines, with one exception, are small businesses.

Under the Small Business Administration’s definitions, an air carrier is defined as a small business if they employ 1,500 employees or less. Given the costs we believe this proposal will entail, and at least partially acknowledged by the CDC, this proposal represents a significant financial burden for small business air carriers like NACA’s members. In fact, given the serious financial condition of the airline industry, a strict implementation of this proposal might have fatal results for many carriers struggling with intense competition, lower load factors and higher fuel costs.

Recommendation:

We are well aware that CBP is one of CDC’s important government partners in its program to prevent the spread of disease across international borders. As noted above, U.S. airlines are already transmitting most of the data CBP requests herein to CBP. Furthermore, CBP already has full-time electronic access to the major PNR data bases owned or operated by U.S. airlines. We recommend that CDC collaborate with CBP to use the APIS data system and the electronic connectivity to carriers to access passenger data as necessary. As the CBP APIS system is already used to transmit crew manifests to TSA, we are well aware that CBP has the ability to re-direct passenger manifest data to CDC with little or no further effort. To do otherwise will have significant economic implications, particularly for our small airlines.

Section 70.8 and Section 71.15:

Sec. 70.8 “Military services”, states that the “Director may exempt carriers belonging to the military services from Sec. 70.6(a) and Sec. Sec. 70.11 and 70.12, provided that such carriers take adequate sanitary measures to prevent the introduction, transmission, and spread of communicable diseases.” NACA concurs with section. However, the language “carriers belonging to the military services” is not consistent with what we believe is the true relationship

of carriers and the military. This paragraph should provide an exemption for “whole-airplane military charter flights” from the provisions of the named sections. Furthermore, NACA further recommends that the CDC exempt all whole-airplane military charter flights from all provisions of the changes proposed in this NPRM. The rationale is that the public has no access to these flights. No civilian that is not sponsored by the Department of Defense (i.e., active duty military and their dependents, retired military, and some civilian DOD employees) are eligible to travel on these flights. The contracts for these flights have strict provisions for reporting of sickness or death on the flights.

Recommendation:

Replace “carriers belonging to the military services” with “whole-airplane military charter flights”.

Section 70.3, 70-5 and 71.7.

Among other things, these section requires the designation of an airline agent that is available on a “24-hour basis, 7 days a week .” All of NACA’s passenger airline members already have an operations center that is manned 24 hours a day, seven days a week. Their responsibilities include the ability to send or receive communications with any flight and on short notice. However the controller positions are manned by various well trained dispatchers, not by a single individual. Beyond that, air carriers already have specific people designated to handle various events that may transpire on a given flight. Depending on the event, these people are designated in the airline’s FAA required operating manuals. Adding points of further contact with the CDC will only serve to create redundancies and possible confusion within the airline and other federal agencies that may be involved in a quarantine situation, like the Federal Aviation Administration (FAA).

Recommendation:

Permit airlines to designate the operations controller on duty at any time as the point of contact, and permit them to provide the 24-hour a day, 7-day a week phone number for that office as the primary point of contact for the CDC.

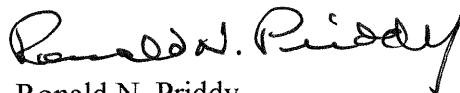
Summary

To make this CDC proposal work as smoothly and as efficiently as possible, we believe the CDC should make changes to its NPRM based on the public comments received. The CDC should then provide another opportunity for interested parties to submit comments on a Supplemental Notice of Proposed Rulemaking (“SNPRM”) which would reflect changes that the CDC made in response to the first round of public comments. Alternatively, the CDC could revise the proposal then schedule a public meeting to provide interested parties with the opportunity to make oral presentations if it is decided that such a forum would be useful. At the very least, if a SNPRM was issued, the CDC would have an opportunity to refine its final rule in a way that the aviation industry would be able to implement without the tremendous costs associated with this current NPRM.

One or more of NACA's member airlines have indicated their intent to file additional, individual airline comments. To the extent they do not conflict with the specific comments here, NACA also endorses those individual member comments.

We thank you for your careful consideration of our comments. If we can be of additional service or provide clarifying comments, please do not hesitate to contact myself or our Director of Government Affairs, Paul Doell.

Respectfully Submitted



Ronald N. Priddy
President