

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Control of Communicable Diseases
Q Rule Comments; RIN 0920-AA03
Notice of Proposed Rulemaking

COMMENTS OF THE ELECTRONIC PRIVACY INFORMATION CENTER

By notice published on November 30, 2005, the Department of Health and Human Services (“HHS”) requested public comments with respect to the proposed rule concerning the “Control of Communicable Diseases.”¹ Pursuant to this notice, the Electronic Privacy Information Center (“EPIC”) submits these comments to address substantial privacy issues raised by the collection, transmission, and retention of passenger information under the proposed rule.²

Introduction

The proposed rule would expand the amount of data gathered from travelers for the CDC, and would impact greatly the privacy of travelers. EPIC urges the CDC to limit the scope of data collected to that which is necessary; the CDC also should explicitly require the clear and open disclosure that travelers can refuse to submit their information without facing penalties, and the CDC must set strict security standards to keep passenger data secure from unauthorized access and misuse. EPIC urges HHS and CDC to conduct a Privacy Impact Assessment prior to the rule’s implementation in order to resolve these issues and any other security and privacy problems that such an assessment would raise.

¹ Notice of Proposed Rulemaking, 70 Fed. Reg. 71892 (Nov. 30, 2005).

² *See, generally*, EPIC’s Medical Privacy Page at <http://www.epic.org/privacy/medical/>.

I. CDC Should Limit Scope Of Data Collected To That Which Is Necessary

The proposed rule would require that airlines and shiplines ask for an extensive amount of personal information from travelers, beyond the current data gathered for the CDC. Under the proposed rule, airlines and shiplines would expand their current CDC data collection and ask for: (1) full name, (2) emergency contact information, (3) e-mail address, (4) current home address, (5) in the case of foreign nationals, passport number or travel document (including issuing country or organization), (6) names of traveling companions, (7) flight information for outbound and return trips, and (8) current phone number (cell, home or work).³ The airlines and shiplines would be required to retain gathered information “in an electronic database for 60 days from the end of the [journey], and transmit the information to CDC within 12 hours of a request.”⁴ In addition, the proposed rule would give the CDC Director broad powers to order airlines and shiplines to transmit any further information (including travelers’ personal data) held by them if the Director believes the information “may be necessary to prevent the introduction, transmission, or spread of communicable diseases.”⁵

The CDC cites a Harvard School of Public Health study to determine that “[c]ollection of this information finds strong support in public opinion.”⁶ The study found “that 94% of air travelers would want public health authorities to contact them if they might have been exposed to a serious contagious disease on an airplane. In addition, 93%

³ *Id.* at 71899.

⁴ *Id.*

⁵ *Id.* at 71932.

⁶ 70 Fed. Reg. at 71898.

of domestic air travelers and 89% of international air travelers expressed a willingness to provide *some* type of contact information” (emphasis added).⁷

The CDC’s stated purpose for this proposed rule is “to enable CDC to respond more effectively to current and potential communicable disease threats.”⁸ The CDC wishes to be able to quickly contact any traveler who may be at risk of infection, and the Harvard study shows the public wishes for prompt notification of possible infection. However, the proposed expansion of the personal information gathered is broader than what is necessary. Gathering the full name and “some” emergency contact information (which could include a physical address, phone number, or e-mail address) of passengers are sufficient to enable contact in case of a CDC emergency. The CDC does not need to further intrude into travelers’ privacy by requesting passport number or travel document (including issuing country or organization), flight information for outbound and return trips, nor the names of their traveling companions.

II. CDC Should Explicitly Require the Clear and Open Disclosure That Travelers Can Refuse to Submit Their Information Without Facing Penalty

The proposed rule requires that airlines and shiplines solicit travelers for an extensive amount of personal information, beyond the current data gathered for the CDC. Though the CDC states “passengers who decline to provide contact information will not be prohibited from traveling,” the process would be de facto involuntary.⁹ The proposed rule does not explicitly require the companies to clearly and openly disclose to travelers that they have the option of refusing, and when the companies ask for the detailed information, travelers would submit it as a matter of course. The proposed rule merely

⁷ *Id.*

⁸ *Id.* at 71893.

⁹ *Id.* at 71899.

states, “Airlines shall ensure that passengers are informed of the purposes of this information collection at the time passengers arrange their travel.”¹⁰

In addition, some of the existing provisions of the proposed rule should be modified to reflect the fact that passengers are not obligated to provide their personal information. For example, § 70.4(a) states:

Any airline operating flights in interstate traffic shall, pursuant to the written plan required under § 70.5 *solicit* from each passenger (or head of household if the passenger is a minor) and crewmember traveling on those flights in interstate traffic arriving in or departing from any of the airports listed in Appendix A the information contained in the data fields specified in paragraph (e) of this section (emphasis added).¹¹

Airlines and shiplines could misinterpret this language to mean that it is mandatory for travelers to disclose the information requested. To reflect that the disclosure is voluntary, a section could be added immediately following § 70.4(a) stating, “While airlines shall solicit data from each passenger (or head of household if passenger is a minor) and crewmember, airlines must openly and clearly disclose to travelers that the provision of such information is voluntary, and they will not be penalized for refusing to disclose such information.”

III. Passenger Data Gathered Must be Kept Secure from Unauthorized Access and Misuse

Under the proposed rule, airlines and shiplines would be required to transmit passenger information to the CDC in certain circumstances.¹² Airlines and shiplines would be required to develop a written plan for passenger information that contains policies and procedures for the transmission of data in electronic format that complies

¹⁰ 70 Fed. Reg. at 71900.

¹¹ *Id.* at 71930.

¹² *Id.* at 71930 and 71939-40.

with “industry standards for data encoding, transmission and security.”¹³ This language is vague and insufficient in security terms.

The proposed rule fails to define what constitute “industry standards,” how to determine whether such standards are followed, and the punishment for failure to adhere to the standards. The proposed rule fails to address how passenger information is to be protected. The proposed rule states, “Airlines are expected to safeguard the confidentiality of the information collected. Under the proposed regulation, information collected solely in order to comply with this rule may only be used for the purposes for which it is collected.”¹⁴ However, no specific security protocols are set out. The CDC simply states, “information and records provided to CDC will be maintained and stored in accordance with HHS and CDC policies and in accordance with Privacy Act ... and its implementing regulations.”¹⁵ Audit trails should be implemented so that, should there be a privacy or security violation, the perpetrator easily could be identified through them.

Under the proposed rule, airlines and shiplines would retain passenger information collected for at least 60 days after the end of the flight or voyage.¹⁶ However, the rule should, but does not explicitly require airlines and shiplines to remove and destroy passenger information from their electronic databases after the 60-day retention period.

Security risks also arise from the fact that, under the proposed rule, travel agents could collect passenger information if an airline adopts a “Point of Sale” system.

“Although the majority of passengers will directly enter all necessary information when

¹³ *Id.* at 71931 and 71941.

¹⁴ 70 Fed. Reg. at 71900.

¹⁵ *Id.* at 71899.

¹⁶ *Id.*

booking through airlines or Web-based systems, those booking through travel agencies will still need additional data entered for them by the travel agent,” says the CDC.¹⁷

Allowing travel agents to collect extensive passenger information creates additional privacy and security risks it significantly expands the number of those with access to this traveler data. Thus, clear standards are needed to address the secure collection, retention, and transmission of passenger information that is handled by travel agents. The CDC should include in its proposed rule a requirement that the information gathered may not be disclosed to data brokers such as ChoicePoint and Acxiom.

Conclusion

Because the proposed rule would expand the amount of data gathered from travelers for the CDC, and would impact greatly the privacy of travelers, strict privacy and security safeguards must be required. EPIC urges the CDC to limit the scope of data collected to that which is necessary, to explicitly require that airlines and shiplines clearly and openly disclose to travelers that they can refuse to submit their information without facing any penalties, and to set strict security standards to keep passenger data secure from unauthorized access and misuse. EPIC also urges CDC conduct a Privacy Impact Assessment and to delay implementing the proposed rule until the above security and privacy issues, and any others that such an assessment would raise, could be resolved.

Respectfully submitted,

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¹⁷ *Id.* at 71916.

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