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September 25, 2006

Bureau of Customs and Border Protection  
Office of Regulations and Rulings  
Regulations Branch  
1300 Pennsylvania Avenue, NW  
Washington, DC 20229

Re: **Regulatory Information No. 1651-AA66 (Docket No. USCBP 2006-0097)  
Documents Required for Travelers Arriving in the United States at Air and  
Sea Ports-of-Entry From Within the Western Hemisphere**

Dear Commissioner Basham:

On behalf of the U.S. Chamber of Commerce (“Chamber”) and the other groups listed below we would like to present our comments on the Notice of Proposed Rulemaking (“NPRM”) cited above pertaining to the implementation of the Western Hemisphere Travel Initiative (“WHTI”).

We would like to begin by acknowledging that the NPRM does take a step forward by treating land border and ferry terminal crossings equally. The circumstances of travel at land borders and ferry terminals are extremely similar and, thus, it is the right approach to address them jointly at a later date. Also, we concentrate these comments on the sea travel portion of the NPRM—where the greatest economic impact of the proposed regulations would be.

**I. The U.S. Chamber of Commerce and the Americans for Better Borders Coalition**

The Chamber is the world’s largest business federation, representing more than three million businesses. The Chamber’s federation includes state and local chambers throughout the United States and 104 American Chambers of Commerce overseas. The Chamber’s membership includes businesses and organizations of every size and in every sector of the economy. Chamber members with interest in the WHTI include cruise lines, airlines, hotels, restaurants, companies that depend on the efficient movement of goods across our borders, companies that do business with international customers and clients, border area businesses, companies in the travel and tourism industries, and companies that employ an international workforce that commute from the countries affected by the

NPRM. Chamber members on both the U.S.-Mexico and U.S.-Canada borders, including local chambers of commerce and American Chambers of Commerce abroad, that conduct business between the United States and other countries also have a great interest in the implementation and efficiency of the WHTI. These comments reflect the information and concerns expressed to date by these members to Chamber staff on the implementation of the WHTI.

The Chamber is also the chair of the Americans for Better Borders (“ABB”) coalition, which unites regional business organizations and a wide array of companies and national trade associations representing manufacturing, hospitality, tourism, transportation, recreation and other industry sectors, in working to ensure the efficient flow of tourism and goods across our borders while addressing national security concerns. The ABB was originally founded in 1998 out of concern for the impact of implementation of the original entry-exit provision of Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.<sup>1</sup>

## **II. Proposed Rules Should Be Postponed in Deference to Legislative Action.**

The Department of Homeland Security (“DHS”) and the Department of State (“DOS”) should let Congress finalize its work on both the Fiscal 2007 Homeland Security Appropriations and the Fiscal 2007 Foreign Operations Appropriations. Both bills contain what is known as the Stevens/Leahy provisions that mandate a uniform implementation date of June 1, 2009, for the sea and land travel implementation of the WHTI. Given the expected mandated extension of the deadline, it is illogical for DHS and DOS to work in direct contradiction with a schedule that accelerates the deadlines. Furthermore, a uniform deadline, with or without a mandated extension, would alleviate confusion among the traveling public.

The Stevens/Leahy provisions also give DHS and DOS clear instructions for successfully implementing a new “passport card” system. Specifically, these provisions would set limits on the cost of the passport card for American citizens, so it would be an economical substitute to a passport. The provisions also require DOS and DHS to permit cruise passengers to use the passport card and provide the extension discussed above to ensure the availability of the passport card for cruise line passengers prior to the regulations’ implementation. Furthermore, it requires DHS to share the passport card technology with Canada and Mexico and install passport card readers at all Ports-of-Entry (“POE”), so the United States can coordinate with our neighbors on creating a more efficient and secure border crossing process for both those leaving and those entering the United States. Finally, the provisions establish alternative procedures for groups of children traveling across the border with parental consent.<sup>2</sup>

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<sup>1</sup> Americans for Better Borders, [www.abbcoalition.org](http://www.abbcoalition.org).

<sup>2</sup> There is one subsection of the Stevens/Leahy provisions that would require the electronic components of the passport card to comply with ISO 14443, an international interoperability standard, not a security standard. This would narrow the potential set of solutions for the passport card system. We support a competitive process that selects the best possible passport card solution. Thus, we are working to get the ISO 14443 references removed.

Should DHS and DOS go forward with the proposed regulation, despite Congressional action, and to the extent they will be used as the basis for subsequent regulations on land border and ferry terminal crossings, we request that they take into consideration the substantive issues presented below that are of great concern to the Chamber, its members, the ABB coalition, and the other groups listed at the end of these comments:

### **III. Sea Travel Deadlines Should Match Those for Land Travel**

While the demographics of the international airline traveler leads to a larger proportion of those having passports, the ratio of passport holding travelers in uninterrupted-loop cruises is closer to that of the population at large, especially for those travelers taking short (two to five days) Caribbean cruises.<sup>3</sup> Thus, accelerating the deadline for sea travelers leaving from the United States could have an extremely large impact on the cruise industry. This is particularly troubling because the law itself, as passed by Congress in 2004, does not require sea travelers to meet the deadline any earlier.

A recent survey conducted by the International Council of Cruise Lines found that only 30-40 percent of U.S. travelers on short uninterrupted-loop cruises in the area covered by the NPRM have passports.<sup>4</sup> The high number of United States cruise line travelers without passports is exacerbated by the fact that cruise trips are characteristically a family or group activity where at least one of the members does not have a passport. Thus, the proposed regulations could deter entire families or groups from going on a cruise. In fact, a survey conducted by Zogby International last February found that about a third of American and Canadian non-passport holders would be less likely to cross the border if they needed a passport to do so.<sup>5</sup> The same could be expected of cruise ship travelers. Accelerating the deadline to 2007 would also prevent cruise passengers from taking advantage of the future passcard option and other alternatives currently being planned.

There is no basis for accelerating the deadlines for uninterrupted-loop sea travelers leaving from U.S. ports from those entering through our land borders and ferry terminals. Security and safety are already the main concerns of the cruise line industry. Currently, cruise ships electronically submit a passenger and crew list prior to departure, and before arrival at a U.S. port. In fact, the lists are submitted 96 hours in advance of arrival at a U.S. port to both the U.S. Coast Guard and the Bureau of Customs and Border Protection.

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<sup>3</sup> Throughout this document, as it pertains to cruise line travelers, we are referring to those starting their trip by boarding at a U.S. port and finishing at a U.S. port—hence, “uninterrupted-loop.” We have no objection to having those starting their trip by boarding abroad to be subject to different requirements.

<sup>4</sup> Information found at <http://www.iccl.org/pressroom/pressrelease.cfm?whichrel=106> on September 19, 2006.

<sup>5</sup> The survey was commissioned by the Chamber together with the Business for Economic Security, Tourism & Trade Coalition and other business groups and it can be found at [http://www.bestcoalition.com/files/Zogby\\_Poll\\_Analysis.pdf](http://www.bestcoalition.com/files/Zogby_Poll_Analysis.pdf).

These lists include detailed information about all the passengers, including name, birthday, nationality, proper identification number, and port of embarkation. The lists are then checked against law enforcement databases before the cruise ship is cleared for departure and later upon their return to the U.S. Extensive additional security measures are in place at all times. These measures ensure that all passengers and crew members are accounted for during the trip, including when they leave and re-enter the ship. All of these thorough safety procedures are not even possible for land border and ferry terminal entrants.

#### **IV. A Public/Private Partnership**

The Chamber recommends and encourages the creation of a public/private group chartered to evaluate and make recommendations on how the flow of all air, sea, and land travel to or from Canada, Mexico, Central and South America, the Caribbean, and Bermuda can be improved while enhancing security. Before its dissolution, the Data Management Improvement Act (“DMIA”) Task Force was a private/public group chartered in 2001 by the Attorney General to evaluate and make recommendations on how to improve the flow of traffic at United States airports, seaports and land border POE, while still improving security. This task force was very successful and should be the model for any new public/private partnership.

In fact, at a Congressional hearing on WHTI last November, the main witness “strongly recommend[ed] that DHS and State form partnerships with border communities to advise them as they move forward in the rulemaking.”<sup>6</sup> Our suggestion that such a group follow the framework of the DMIA Task Force was said to “be a step in the right direction.”<sup>7</sup>

Regretfully, despite the fact that we made the same recommendation about a year ago in our filed comments to the Advance Notice of Proposed Rulemaking on this issue (USCBP-2005-0005), both DHS and DOS have moved forward with the proposed regulations without the benefit of such a task force. We hope that in the coming months, as the private sector advisory board proposed in the Rice-Chertoff Initiative becomes a reality, the business community will be able to provide more input before future regulations are published through the creation of such a task force.

While every single situation cannot be foreseen, such a partnership can work to address issues such as travel by school children on day trips, Pee Wee hockey and other crossborder youth and sports activities, travel by the elderly and disabled (for example, family members with Alzheimers), volunteers responding to fires and emergencies across the border (an everyday occurrence), or the obtaining of day passes by a family after a thorough security screening of brief duration, such as a few of hours. Furthermore, such a partnership would be instrumental in reviewing and evaluating, soon after implementation

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<sup>6</sup> Prepared Remarks of The Honorable Louise Slaughter (NY-28), Congresswoman U.S. House of Representatives, before the Small Business Committee of the U.S. House of Representatives at a hearing on *Building a Wall Between Friends: Passports to and from Canada?*, November 17, 2005.

<sup>7</sup> *Id.*

of each phase, the economic effects of the adopted regulations. This evaluation could consider the WHTI implementation's effect on national and economic security and international trade and travel. Relying on such a review, Congress would be in a much stronger position to consider recommendations and also reconsider deadlines and requirements for all phases of implementation.

## V. The WHTI Law and Its Economic Impact

Once again, it is important to note that the statutory basis giving rise to this NPRM, Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 ("IRTPA"), clearly states that a passport substitute should be another document "or combination of documents" that are "sufficient to denote identity and citizenship." The Chamber, its members, the ABB coalition, and the organizations named below fully support the efforts of DHS and DOS to improve security at our ports of entry and borders. However, we recognize the charter of DHS also includes the mission to: "ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland."<sup>8</sup> Therefore, as representatives of the business community and the primarily concerned constituencies, we feel it necessary to express our concerns with regard to the economic consequences of an improperly developed and implemented WHTI.

To date, the closest we have to an economic impact study of the effect of the WHTI on the American economy is a research report from the Canadian Tourism Commission.<sup>9</sup> Although the report concentrates primarily on the effects of the WHTI on the Canadian tourism industry, it gives some insight into the effect of the WHTI on the American tourism industry. The current estimate of trips by Canadians to the United States in 2004 is more than 35 million and without the new stringent requirements imposed by the WHTI, that number would be expected to go to over 40 million by 2008, when the WHTI land border identification requirements come into place.<sup>10</sup> It is expected that by 2008 a passport requirement under the WHTI would reduce Canadian pleasure travel to the United States by about 5.1%.<sup>11</sup> In fact, research has found that some Canadians already think the passport requirement is in place, leading to an estimated cumulative economic impact shortfall on total United States receipts from Canadian travel from now until the end of 2008 of about \$667 million.<sup>12</sup> We are convinced that the accelerated deadline proposed is already having the same effect on cruise ship travel.

Meanwhile, the NPRM economic impact assessment is incomplete and overly optimistic. It looks mainly at the total cost to traveling U.S. citizens for getting a passport on the first year of the air and sea regulation implementation. It finds the total direct cost for this first year to be approximately \$941 million. The assumptions made in the analysis

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<sup>8</sup> Homeland Security Act of 2002, Pub. L. No. 107-296, §101(b)(1)(F).

<sup>9</sup> Canadian Tourism Commission, *The Potential Impact of a Western Hemisphere Travel Initiative Passport Requirement on Canada's Tourism Industry*, Research Report 2005-2.

<sup>10</sup> Id. at 25.

<sup>11</sup> Id.

<sup>12</sup> Id. at 26.

are extremely troublesome. For example, while the most reliable DOS data and industry surveys show that about 75% of cruise ship travelers lack passports, the NPRM economic impact assessment assumed that only “27% of all cruise passengers do not hold a passport.”<sup>13</sup> The assessment states that the 27% assumption derives from a “survey of leisure air travelers and may not be particularly representative [of cruise line travelers].”<sup>14</sup> Nevertheless, while admitting that the assumption “seemed high” and that “overestimating the number who already hold passports... would underestimate the direct costs of the rule,” 27% is the number they used throughout the document for the calculations on the direct cost of the proposed regulation.<sup>15</sup>

Another more troubling assumption made in the NPRM economic impact assessment is that gains in domestic travel from Americans that would no longer travel to Mexico and Canada or take Caribbean cruises due to the regulations would offset the indirect losses from a reduction from visiting Canadians and Mexicans to the U.S. Ignoring for the time being the social implications such a policy would bring, we believe that the impact on the U.S. economy from Western Hemisphere visitors is being trivialized given that Canadians alone spent more than \$10 billion in the United States last year.

Since 1992, the United States share of the international tourism market has fallen sharply translating into a loss to our economy of \$286 billion in potential GDP growth, \$43 billion in 2005 alone, and millions of jobs.<sup>16</sup> Given that international travelers customarily take longer trips and spend significantly more in each trip than Americans on domestic trips, this decline has serious economic consequences to businesses across the U.S. The exceptions to this decline were increased international travel market share with travelers coming from Canada and Mexico; the two countries that would be the most affected by any new WHTI regulation. Thus, we continue to recommend that the U.S. General Accounting Office or another independent entity conduct further research as to the economic impact of the WHTI under different document requirements before any final decisions are made. A reasonable solution will not be found until the total economic impact is realistically and objectively analyzed.

## **VI. Alternatives to Passports**

In addition to the proposed passcard, we continue to call for the acceptance of a document or combination of documents that are as close to being non-discretionary as possible. Thus, serious discussions are needed between the federal government and the states with regard to the acceptance of driver’s licenses by themselves and/or with birth

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<sup>13</sup> US Customs and Border Protection, Office of Regulations and Rulings, *Regulatory Assessment for the Notice of Proposed Rulemaking*, August 2006, pp. 2-56 and 57.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> U.S. Travel and Tourism Advisory Board, *Restoring America’s Travel Brand: A National Strategy to Compete for International Visitors*, September 5, 2006, p. 5. The report can also be found at [www.commerce.gov/opa/press/Secretary\\_Gutierrez/2006\\_Releases/September/TTAB%20National%20Tourism%20Strategy.pdf](http://www.commerce.gov/opa/press/Secretary_Gutierrez/2006_Releases/September/TTAB%20National%20Tourism%20Strategy.pdf).

certificates.<sup>17</sup> It is our position that if licenses comply with certain requirements they should also be authorized as appropriate substitutes to a passport, as allowed under Section 7209 of the IRTPA. This becomes even more apparent given the new requirements found in the REAL ID Act and the move by all states to make licenses more secure, even when the state has no immediate plan to implement the REAL ID Act. In the United States, a driver's license with a birth certificate is the best-known, and most generally accepted, combination of documents that denote identity and citizenship.

Both DHS and DOS acknowledge that a birth certificate and a driver's license are sufficient to establish nationality and identity for the purpose of obtaining a passport. Unfortunately, they are both then dismissive of authorizing acceptance of such combination of documents when addressing a passport substitute. They argue that the difficulty of training border officers to determine the validity of these documents makes it impossible to allow them to be acceptable substitutes to passports; however, the possible economic costs of a restrictive program must also be realistically considered. The determination not to accept driver licenses seems to have been made without a discussion with the states/provinces, business interests, and other affected parties, on possible solutions to their concerns. Further, it completely contradicts their position in other contexts. If DHS and DOS find these documents together to be adequate when applying for a passport, why are they not adequate in all other contexts?

In addition, especially with regards to accepting driver licenses by themselves, States have already begun moving toward making these documents machine readable, coded with biometric identifiers, and other security and tamper resistant features. The technology already exists with easy to use machines that would tell border agents whether documents are legitimate in a matter of seconds. We are not advocating for the acceptance of "baptismal records, certificates of naturalization, [and] certificates of identity," about which the Departments seem to be concerned.<sup>18</sup>

Furthermore, a U.S. passport application costs about \$100 and takes approximately two months to be processed.<sup>19</sup> With "expedited" processing the passport application costs over \$150 and still takes approximately two weeks to process.<sup>20</sup> The applicant for a passport must still submit their own photos, complete the appropriate forms, and in many instances must apply in person by appointment only during very limited hours. If the passport is for a child, the child must be present at the appointment with both parents or another set of legal documents are required to be completed and notarized prior to the appointment. Meanwhile, driver licenses and birth certificates can usually be obtained the same day without the need for an appointment at state government offices, many of which

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<sup>17</sup> While we use the term driver's licenses throughout our comments, when we use this term we are also referring to official state identification cards that, with the exception of a driving test, have the same issuance requirements.

<sup>18</sup> Answer by U.S. Customs & Border Protection to "Frequently Asked Questions," also available at [www.customs.gov/xp/cgov/travel/vacation/kbyg/west\\_hem\\_init/west\\_hem\\_faqs/dhs\\_faqs.xml](http://www.customs.gov/xp/cgov/travel/vacation/kbyg/west_hem_init/west_hem_faqs/dhs_faqs.xml).

<sup>19</sup> US Customs and Border Protection, Office of Regulations and Rulings, *Regulatory Assessment for the Notice of Proposed Rulemaking*, August 2006, p. 2-3

<sup>20</sup> Id.

are even open on Saturdays. The NPRM economic impact assessment found the average cost of a state photo identification to be only \$15 with the picture taken on site free of charge.<sup>21</sup> Also, the machine readable capabilities would allow states to denote citizenship without making the information visible in the face of a driver license. Of course, citizenship determination would remain the purview of the federal government.

Finally, consideration must be given to groups visiting or leaving the U.S. on short trips, such as sports teams, families, and school groups, including those traveling on uninterrupted-loop cruises. Besides the facts stated above as to groups traveling on cruises, many of our members on both the Southern and Northern border report that day trips from Mexican and Canadian school children and others account for the majority of their daytime weekdays proceeds. The expense and logistics of ensuring that all members of such groups have a passport will be close to impossible. Thus, any new proposed regulation must address this vital market.

## **VII. A Multilateral Process is Essential**

While the Departments are merely attempting to implement U.S. law, the WHTI implementation process should become multilateral versus unilateral. There must be both a U.S.-Canadian partnership and a U.S.-Mexican partnership going forward. The border is shared and a serious decision such as changing well-known traveling documentation requirements should also be shared. The good news is that such partnerships already exist, as evidenced by both the Smart Border Declaration and the Security and Prosperity Partnership.

Any approach which is unilateral in nature, or which is even substantially perceived as unilateral, could be troublesome in terms of effective implementation, economics, international relations and public reaction. For example, what are Canada and Mexico supposed to do if they do not change their entry requirements and Americans crossing into these countries with state identification cards are then denied entry back into the U.S.; what kinds of delays on trade and traffic would such unexpected and unplanned consequences cause?

In fact, it is critical that the process not only becomes multilateral between the federal governments, but also becomes multilateral in a meaningful way, engaging the states and provinces (especially those along the border). Border states and provinces, with so much at stake and as the most directly impacted jurisdictions, should also be given the opportunity to play a key role in addressing the various documentation issues and possibilities. They have always answered the call when given a chance and our federal government should commit to bringing them directly to the table without delay.

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<sup>21</sup> Id. at 2-72 and 73.

### VIII. Outreach

We trust that our comments make clear that one of the major requirements for successful implementation of the WHTI is systematic and concerted outreach to the traveling public to educate them regarding the operation and the requirements for the WHTI, but also to counter the increasingly negative perceptions abroad attributed to these U.S. Government actions. As an article in the *International Herald Tribune* pointed out: “Fear of flying, a subliminal condition for travelers since 9/11, has acquired an even more chilling dimension: fear of arriving. Just as we come to terms with the hassles of airport security checks, delayed and canceled flights and the threat, or promise, of air marshals, visitors to the United States are faced with new, onerous conditions.”<sup>22</sup>

Such news reports, widespread overseas, reinforce the perception that it is becoming more difficult to travel to the United States, and discourage legitimate law-abiding would-be tourists and business persons from continuing to think of the United States as a vacation or investment destination. The Chamber and some of the groups named below have already testified several times before Congress regarding the negative impact of these perceptions on U.S. business, as a consequence of changes to U.S. visa policies at consulates overseas. The new addition of the WHTI program has only added another layer to the perception that “fortress America” is being built.

The Chamber is doing its part by urging our American Chambers of Commerce overseas to include information in their newsletters and other publications regarding WHTI implementation phases. Chamber staff have addressed audiences at conferences and other venues to discuss the implementation phases and the proposed new requirements. We urge a strong, robust, and extensive outreach campaign, far in advance of any changes in requirements that also clarifies the relevant deadlines. We also encourage DHS to move ahead with “public hearings . . . held at strategic locations to provide an open forum pertaining to the proposed changes.”<sup>23</sup>

Finally, we again urge DHS to continue efforts to reach out to the private sector as *partners* throughout implementation of the WHTI. We strongly believe the DMIA Task Force format has been the best forum thus far for the federal government to obtain crucial external evaluation from the stakeholders whose livelihood and businesses depend on a successful implementation of this and other new security measures.

Knowledge about border management and processes, as well as the possible breadth of the constituencies that could be represented in such a task force, are unique. Thus, the Department should make every effort to find adequate formal mechanisms for the frank exchange of views, evaluations and recommendations that were the hallmark of the DMIA Task Force, an effort that was instrumental in reaching consensus on many difficult border related issues. Viable solutions will require flexibility and may well

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<sup>22</sup> Roger Collis, *The fear of arriving: the newest anxiety*, INTERNATIONAL HERALD TRIBUNE, January 19, 2004.

<sup>23</sup> ANPRM’s Registration Information No. 1651-AA66.

require different identification systems for different types of visitors. Taking reliable documents “off-the-table” and accelerating the statutory deadlines without substantial and formalized discussions with affected stakeholders could lead to a program that unduly penalizes American business and the American economy.

## **IX. Conclusion**

We wish to reiterate our support for the overall mission of the WHTI. Our comments are meant to highlight areas of concern with the proposed implementation of the WHTI in order to avoid potential negative impacts to legitimate travel and trade.

We greatly appreciate the excellent relationship we have developed with the Departments and, particularly, with its Bureau of Customs and Border Protection, and hope to continue and expand that relationship in the future.

Sincerely,



Randel K. Johnson, Vice President  
Labor, Immigration and Employee Benefits



Angelo I. Amador, Director  
Immigration Policy

### **Also on behalf of:**

American Hotel & Lodging Association  
American Immigration Lawyers Association  
American Society of Association Executives  
American Trucking Associations  
Bellingham/Whatcom Chamber of Commerce & Industry  
Binational Tourism Alliance  
Buffalo Niagara Partnership  
Business for Economic Security, Trade and Tourism Coalition of the U.S. and Canada  
Canadian/American Border Trade Alliance  
Canadian American Business Council  
Detroit Regional Chamber  
Free Trade Alliance San Antonio  
McAllen Chamber of Commerce  
National Business Travel Association  
National Foreign Trade Council  
National Tour Association  
Plattsburgh-North Country Chamber of Commerce  
Quebec-New York Corridor Coalition  
Victoria San Juan Cruises  
Washington International Education Council