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October 31, 2005

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-2005-0005)
Documents Required for Travel Within the Western Hemisphere**

Dear Commissioner Bonner:

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 Advance Notice of Proposed Rulemaking (“ANPRM”) cited above pertaining to the implementation of the Western Hemisphere Travel Initiative (“WHTI”).

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 96 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 companies and organizations in the travel and tourism industries, companies that do business with international customers and clients, and companies that employ an international workforce. 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, to work 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 1996.¹

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 Ports-of-Entry (“POE”), while still improving security. This task force was very successful and should be the model for any new public/private partnership.

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 couple of hours. Furthermore, such a partnership would be instrumental in reviewing and evaluating, soon after implementation 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 during implementation. It is further recommended that any mandates in this area receive appropriate funding.

The WHTI Law

It is important to note that the statutory basis giving rise to this ANPRM, namely 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, and the Americans for Better Borders coalition fully support the efforts of the Department of Homeland Security (“DHS”) to improve security at our ports of entry and borders. However, we recognize the charter of the Department of Homeland Security 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.”² Therefore, as representatives of the business community and the primarily concerned

¹ Americans for Better Borders, www.abbcoalition.org.

² Homeland Security Act of 2002, Pub. L. No. 107-296, §101(b)(1)(F).

constituencies, we feel it necessary to express our concerns with regard to the development and implementation of the WHTI.

Passport Substitutes

Although the first implementation phase deals with air and sea ports, our comments here focus mainly on the future implementation of the land border crossing requirements which are to be phased in by January 1, 2008. Because of the unique nature of land border crossing for legitimate commercial and travel purposes, it is in the land border environment where we expect the greatest disruption when WHTI is implemented. The announcement that documentation such as the Border Crossing Card (“BCC”), the Secure Electronic Network for Travelers Rapid Inspection (“SENTRI”) card, NEXUS card, and the Free and Secure Trade (“FAST”) card can be expected to become acceptable substitutes for a passport is a welcomed step forward. Unfortunately, this will probably do little to diminish the negative economic impact that would be associated with a passport requirement, as they still require a special discretionary form of identification solely for border crossing purposes and, in the case of NEXUS, SENTRI and FAST, are significantly more difficult to obtain. Indeed, in key border states, such as Maine, there is not even one port of entry that has yet implemented NEXUS and the marketing commitment and enrollment rates across the border are woefully low. We would like added to the list a document, or combination of documents, that is as close to being non-discretionary as possible.

Thus, the main debate in the land borders and ferry terminals environment continues to revolve around the acceptance of driver’s licenses³ together with birth certificates, and/or another secondary document such as a Naturalization Certificate, as acceptable substitutes for a passport. It is our position that if licenses and birth certificates, and/or another secondary document, comply with certain requirements—especially given the new requirements found in the REAL ID Act—they should also be authorized as appropriate substitutes to a passport, as allowed under Section 7209 of the IRTPA. Actually, 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 the Departments of Homeland Security and State 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. This determination seems to have been made without a discussion with the states/provinces, business interests, and other affected parties, on possible fixes to their concerns. Further, it completely contradicts their position in other contexts. If State and

³ 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.

DHS find these documents together to be adequate when applying for a passport, why are they not adequate in all other contexts?

Meanwhile, new laws, such as the REAL ID Act, create minimum uniform standards for these forms of identifications that undermine the Departments' position, especially in light of the fact that driver's licenses and birth certificates are becoming increasingly more secure. States have already begun moving toward making these documents machine readable, coded with biometric identifiers, and other security and tamper resistant features. We are not advocating for the acceptance of "baptismal records, certificates of naturalization, [and] certificates of identity,"⁴ about which the Departments seem to be concerned.

We also understand that there are multiple state/provincial driver's licenses and birth certificates. However, we believe the solution comes in having reasonable prerequisites for the acceptance of driver's licenses with birth certificates and/or another secondary document rather than outright elimination of their acceptance, especially since they do, by the Departments' own admission, serve to prove both identity and citizenship.

We also understand that training costs for border personnel may be less under a restrictive program authorizing a very limited range of documents; however, the possible commercial costs of a restrictive program must also be weighed.

A Bilateral Process is Essential

While the Departments are merely attempting to implement United States law, the WHTI implementation process should become bilateral 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 is Canada supposed to do if they do not change their entry requirements and Americans crossing into Canada with state identification cards only are then denied entry back into the United States; 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 become bilateral between the federal governments, but also become 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 of playing a key role in addressing the various documentation issues and

⁴ 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.

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.

Economic Considerations

It is impossible to quantify with any precision the commercial impact of the new document requirements under the WHTI because we still do not know what those document requirements will be. However, it can be reasonably estimated that if the document requirements are too strict, the impact on the American economy will be severe.

We wish to make clear that the circumstances of travel at land borders and ferry terminals are monumentally different than at air and cruise ship POEs and, thus, what might not cause substantial disruption of air and cruise ship travel could still have a severe economic effect on land and ferry travel. The economic impact would be severely exacerbated if the WHTI results in long waits, which would disrupt manufacturing supply lines and produce higher contamination levels to the environment. Most applicants for admission at seaports serving cruise ships and airports receive a comprehensive inspection that includes mandatory data systems checks.

In contrast, the great majority of persons arriving at land border and ferry terminal POEs are residents of the border area who cross frequently and receive an inspection that may or may not include data systems checks. The vast majority of all border crossings into the U.S. occurs at land border POEs and ferry terminals. Border traffic includes U.S. citizens who leave and reenter the U.S. multiple times daily or weekly, permanent residents who make multiple entries, and aliens who hold non-immigrant visas or border crossing cards and commute back and forth daily or weekly from Canada or Mexico. Individuals may also cross land borders as pedestrians, on bicycles, in cars, rails, buses, trucks, or other vehicles.⁵

In fact, DMIA's second annual report to Congress stated that 80% of all inspections take place at the land borders; over 358 million inspections are conducted annually at land borders, compared to 78 million at airports and 12 million at seaports.⁶ The land borders also see the crossing of approximately \$500 billion in surface trade between the United States and Canada and Mexico.⁷ As these facts and statistics reveal, the land borders represent a significantly larger challenge for the Departments in order to ensure that implementation of the WHTI does not impede legitimate commerce and travel. We are concerned that the proposed implementation plan for the WHTI at land borders and ferry terminals, as outlined in the Department's ANPRM, while taking into account some of the previously expressed concerns of the business community, are likely not adequate to meet the challenges of the land border and ferry environment.

⁵ *Data Management Improvement Act Task Force First Annual Report to Congress*, at 11 (2002).

⁶ Source: INS Statistics for FY 2002 cited in the *Data Management Improvement Act Task Force Second Annual Report to Congress*, at 15 (2003).

⁷ *Data Management Improvement Act Task Force Second Annual Report to Congress*, at 15-16.

Given the potential economic and other negative impacts of the WHTI's proposed implementation as it relates to the land borders and ferry terminals, we recommend that before any final regulations are issued an economic impact study be conducted. This is particularly important if DHS is serious about considering:

1. "The economic impact (both long-term and short-term, quantifiable and qualitative) of the implementation of section 7209 of IRTPA, including potential impacts on state, local, and tribal governments of the United States; potential impacts on cross-border trade along United States-Canada and United States-Mexico borders; potential impacts on travel, travelers and the travel industry; and potential impacts on small businesses;" and,
2. "The monetary and other costs anticipated to be incurred by United States citizens and others as a result of the new document requirements such as the costs in time and money that an individual may incur to obtain a passport or other document(s) determined to be sufficient."⁸

It is commonly understood that Canadian visitation to the United States alone is far greater than from any other foreign nation. There were 34.5 million visits by Canadians to the United States in 2003, which had a \$10.9 billion impact on our national economy. At the same time, fewer than 40% of Canadians hold passports and an even a smaller percentage of their children hold passports.⁹ Thus, in the way the WHTI is currently proposed, communities that cater to family vacationers face the prospect of losing a substantial number of their market audience. Furthermore, many older Canadians own, rent, or lease residences in the United States and stay at those locations for extended periods of time. While it is possible they would go through the process of obtaining a passport, visits by vacationing younger relatives would very likely be diminished if for no other reason than the inconvenience and expense of having to go through the passport acquisition process. Why do so if other equally acceptable vacationing locations could be located?

The Buffalo Niagara Partnership, the Detroit Regional Chamber, and the Bellingham/Whatcom Chamber, together represent employers in three border states that conduct over \$60 billion in annual bilateral trade with Canada, are an integral part of the local efforts by chambers of commerce, from San Francisco to Baltimore, in seeking the continuation of driver's licenses with birth certificates as substitutes for passports. As these groups pointed out, a restrictive program would have a negative impact well beyond "just" the border communities.¹⁰

The Plattsburgh-North Country Chamber of Commerce, which serves the area adjacent to the Champlain/Lacolle border crossing in northern New York, conducts an assessment every two years, quantifying and tracking the comprehensive impact of

⁸ ANPRM's Registration Information No. 1651-AA66.

⁹ Data obtained from the Canadian Consulate in Buffalo, NY, by the Buffalo Niagara Partnership.

¹⁰ Letter from Rudnik, Blouse, and Oplinger to local and regional chambers of commerce of June 2, 2005. A copy of one such letter is enclosed as attachment 1.

crossborder economic and social integration in all of its forms (trade, industrial investment, banking, professional services, energy, taxes, tourism, retail, health care, media, education, real estate and more). Looking at just the border community of Clinton County, New York, they have documented a direct, and probably conservative, annual economic impact of \$1.35 billion as of 2002—nearly doubling from \$784 million in 1994.¹¹ This is in a community of just 80,000 residents and is a mere snapshot of the surging economic activity north and south.

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.¹² 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 last year is more than 35 million and without 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.¹³ 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%.¹⁴ 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.¹⁵ We recommend 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.

Outreach

We trust we have made clear from our comments above 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 attributed to these U.S. Government actions abroad. 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.”¹⁶

¹¹ The Plattsburgh-North Country Chamber of Commerce, *The Economic Impact of Canada on Clinton County, New York 2002*, at 2. The assessment for Clinton County, NY, is enclosed as attachment 2.

¹² Canadian Tourism Commission, *The Potential Impact of a Western Hemisphere Travel Initiative Passport Requirement on Canada’s Tourism Industry*, Research Report 2005-2. The research report is enclosed as attachment 3.

¹³ *Id.* at 25.

¹⁴ *Id.*

¹⁵ *Id.* at 26.

¹⁶ Roger Collis, *The fear of arriving: the newest anxiety*, INTERNATIONAL HERALD TRIBUNE, January 19, 2004.

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 has 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 has 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.”¹⁷

Finally, we again urge DHS to continue efforts to reach out to the private sector as *partners* throughout implementation of the WHTI. We understand new mechanisms for securing private sector input in the future of the WHTI and other programs are being considered. We, nonetheless, strongly believe the DMIA Task Force format has been the best way so far for the Department 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 require different identification systems for different types of visitors. Taking reliable documents “off-the-table” without substantial and formalized discussions with affected stakeholders could lead to a program that unduly penalizes American business and the American economy.

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.

¹⁷ ANPRM’s Registration Information No. 1651-AA66.

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

Sincerely,



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Vice President
Labor, Immigration and Employee Benefits



Angelo I. Amador
Director
Immigration Policy

Also on behalf of:

- American Hotel & Lodging Association
- American Society of Association Executives
- Americans for Better Borders Coalition
- Buffalo Niagara Partnership
- Detroit Regional Chamber
- International Association for Exhibition Management
- McAllen Chamber of Commerce
- National Alliance of Gateway Communities
- National Association of RV Parks & Campgrounds
- National Business Travel Association
- National Tour Association
- Passenger Vessel Association
- Plattsburgh-North Country Chamber of Commerce
- Quebec-New York Corridor Coalition
- Southeast Tourism Society
- United Motorcoach Association
- Washington International Education Council
- Western States Tourism Policy Council