



Competitiveness, Training and Trade
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CANADA

Comment Submitted by: The Province of Manitoba (Canada)

RE: Proposed Rule for Documents Required for Travelers Departing From or Arriving in the United States at Sea and Land Ports-of-Entry From Within the Western Hemisphere

To:

Department of Homeland Security/ Department of State
Secretary Chertoff and Under Secretary Fore:

Docket Number: USCBP 2007-0061

Regulatory Information Number 1651-AA69

August 21, 2007

Summary of Position

The Province of Manitoba welcomes this opportunity to provide another comment on proposed rules pertaining to the Western Hemisphere Travel Initiative. Manitoba, along with our provincial, territorial and national colleagues, shares a commitment to border security with the United States. We also share a commitment to preserving the friendship, trade volume and tourist exchange that has been the envy of countries around the world. We believe that any proposed changes to managing our border should be conducted with recognition of that commitment and in the context of agreements already in place such as the Shared Border Accord and the Security and Prosperity Partnership.

This official comment constitutes Manitoba's fourth submission in response to the Western Hemisphere Travel Initiative as follows:

October 2005 - Advance Notice Proposed Rulemaking (ANPRM) for WHTI

September 2006 - Noticed of Proposed Rulemaking (NPRM) for Air and Sea

January 2007 – Notice of Proposed Rulemaking (NPRM) Card Format Passport

August 2007 – Notice of Proposed Rulemaking for WHTI –land and sea PoEs

In our previous submissions we stressed the following key elements:

- 1) delay and synchronize the implementation date of the WHTI until full assessments (economic and capacity) have been completed and test options have been piloted;**
- 2) develop and fund a widespread communications campaign to raise public awareness and preparedness for new documentation requirements;**
- 3) expand existing voluntary trusted traveler and commercial traffic programs (i.e. NEXUS, FAST), so that these options are accessible and available across the U.S. Northern border;**

- 4) ensure that required documents are affordable, accessible, and available through efficient processing means;
- 5) ensure that documentation requirements are flexible, particularly for travellers under the age of 16 and for those living in border communities; and
- 6) support the development of enhanced drivers' licences as alternative documents.

Recognition of U.S. Administrative Developments

Manitoba appreciates the flexibility the U.S. Departments of State and Homeland Security have shown over the last eight months as they move forward with WHTI implementation. The US Administration has clearly recognized and responded to the difficulties of prescribing such a fundamental change to the way our shared border is managed.

Exemption for Minors: The February 2007 announcement granting an exemption to minors and to older teens traveling in groups was particularly welcomed by the Province. This has been one of our key concerns given the vast number of sports leagues and community groups that straddle the border in our area as well as the significant rate of cross border day travel undertaken by border families that live on both sides of the border.

Reprieve for Air Travel: Manitoba was pleased when the State Department granted a reprieve for U.S. travelers who were experiencing unprecedented wait times for passports. It has become apparent that neither the Canadian or American governments had adequately anticipated or prepared for the incredible demand that would result from the first phase of WHTI implementation – particularly when the majority of air travelers already held passports.

The Notice of Proposed Rulemaking for Land and Sea implementation indicates further development in the U.S. administration's planning, which we also applaud:

CIS Card: Given the large First Nations population that resides in Manitoba (11.3 % of Manitoba's population), we are pleased that DHS and State are poised to consider the new Certificate of Indian Status Card (CIS) that is being developed by our federal department of Indian and Northern Affairs. All 125,868 First Nations people in Manitoba would be eligible for this new card.

The card is supported by the First Nations in Manitoba who view it as a means to uphold the border passages rights originally granted by the Jay Treaty and restated as section 289 of the 1952 Immigration and Naturalization Act, currently codified as 8 U.S.C. § 1359:

Enhanced Driver Licenses: Manitoba has consistently stated that alternatives to the passport, such as enhancing already widely-held documents, should be accepted. The EDL initiative in Washington State, supported by the MOU signed with DHS in March of this year, is an encouraging step forward and another sign of DHS' willingness to explore alternative documents and find affordable and workable solutions for families. It is

further recognition of the flexibility allowed for in the original WHTI legislation (calling for “*a passport or other document or combination of documents*”).

We are particularly pleased that the NPRM specifically stated its openness to the development of new driver licenses in Canadian jurisdictions. Enhanced Driver Licenses would meet the security standards defined in the Security and Prosperity Partnership (specifically S.P.P. 1.1.3) thereby meeting our shared security goals while still ensuring that legitimate travel and trade are not compromised.

Over the past several months, the Canadian provinces have been engaged in substantive discussions with our federal government on this topic and are moving forward. British Columbia, Ontario, the Yukon Territory and Manitoba are now proceeding with their own EDL projects. Like the United States, Canada and its provinces are working out issues associated with citizenship verification, privacy, and technology.

Given that the majority of Manitoba’s population resides close to the U.S. border and that fully 60% of our total population of 1.17 million people (700,000) individuals possess active driver licenses, this initiative is being welcomed by Manitobans. Our plans to unfold a non-driver provincial ID card will mean that the non-driving segment of our population could also benefit from this option. We expect as many as 50,000 Manitobans to apply for this card.

We strongly encourage DHS and State to formally recognize enhanced driver licenses as an acceptable, WHTI-compliant border crossing document. We are particularly supportive of recognition of enhanced driver licenses as acceptable border crossing documentation because they would meet the needs of spontaneous, last-minute travelers.

Outstanding Concerns

While the previous section outlines how some of concerns have been heard, it is clear that there are several outstanding issues with implementation of the WHTI at land and sea borders.

Take the Time to Get it Right

Our overriding concern is that we need to work together to ensure we are taking the time to get WHTI right. All attendant concerns could be addressed if DHS and State would welcome and utilize the Congressional extension granted until June 2009. Even that timeline will pose challenges for the provincial and state jurisdictions that want to expand, develop and test alternative documents – but it is a more workable deadline providing there is consistent effort and information sharing by all parties.

- a) **The PASS card** – while only intended for the American population, it is important to Manitoba and Canada because it will facilitate cross border travel for those Americans who reside in border communities closely linked to ours. The latest estimates are that this card will not be available until spring 2008. Unless land implementation is officially delayed, this will never allow enough time for a

sufficient number of would-be travelers to apply and receive a card in time for the summer of 2008 – as envisioned in the NPRM. It also would clearly not allow any time to test the card and attendant card readers for workability.

- b) NEXUS** – Manitoba was pleased with the announcement that a new NEXUS operation and enrollment center will soon be available at Winnipeg’s James Armstrong Richardson International Airport. While this is indicative of DHS’ commitment to NEXUS expansion, the rollout will also contribute to public confusion. Although the NEXUS air, marine and land programs were recently combined, none of the Manitoba border crossings is yet equipped with the necessary card readers to enable NEXUS users to cross with that card. Creating an enrollment center for NEXUS at a Manitoba location without the attendant facilities for land usage will be problematic. If the necessary time is taken to ensure that the land ports of entry are fully equipped with the appropriate technology and trained staff, NEXUS could indeed be a viable alternative for the Manitoba population as well as our neighboring states of Minnesota and North Dakota. According to the NPRM, the immediate plan is to place card readers at 39 of the busiest land crossings. This is a significant increase from the current 11, yet it does not appear that any of these crossings are on the Manitoba border. To further complicate matters, 28,000 of currently held NEXUS cards are up for renewal, and a more efficient renewal process has yet to be developed. Currently 6% of cross border travel is undertaken by NEXUS card holders – this number could be increased dramatically by dedicating more resources to promoting it and to equipping border ports of entry with the necessary technology, thereby allowing for a shift to resources to monitor higher risk travel.
- c) FAST** – The Manitoba Trucking Association represents 14,000 Manitoba truck drivers, 10,000 of whom cross the U.S. border at least once a week. As approximately 40% of these truckers hold FAST cards, it is our hope that FAST will also be designated an officially acceptable alternative border crossing document. We are concerned, however, that of those currently holding FAST cards, 70% will need to renew them by January 2008, adding further stress to our document processing systems. A later land implementation date for WHTI would alleviate this stress.
- d) CIS** – While Manitoba is pleased that DHS and State have indicated their willingness to consider accepting the new CIS card as an acceptable border crossing document, we must stress that it is anticipated the card will not be ready until summer 2008. If WHTI land implementation were to begin at the same time, it would not be realistic for our First Nations population to obtain the new CIS card in time for it to serve as an acceptable border crossing document. More time is needed in order to offer genuine alternatives.
- e) Enhanced Driver Licenses** – Developing, promoting, issuing and testing new driver licenses takes time. Installing necessary card readers at all of the land border crossings takes time. In order for more provincial and state jurisdictions to pursue enhanced driver licenses as acceptable border crossing documents, a more realistic timeframe must be adopted. June 2009 would be a more realistic (albeit

- challenging) goal. Formally endorsing EDLs as acceptable alternative border crossing documents would also go a long way toward alleviating the pressure at the passport issuing offices in both of our countries thereby facilitating compliance with the documentation requirements within a more reasonable timeframe.
- f) **Technology Concerns** – The delay in creating the PASS Card along with the associated news stories and reports about technological and privacy issues also point to the need for more time to assuage these fears and fully test this and other enhanced ID cards. The June 2007 Government Accountability Office (GAO) report reviewing the actions undertaken to implement the WHTI stated, “there is not sufficient time to properly develop and produce” a new piece of identification the size of a credit card – an “alternative passport” that could meet all the standards necessary to secure the U.S. border.” Following on that, its report on US-VISIT revealed that the technology proposed for the PASS card has only had a 16% success rate in some trials. Although we recognize that NIST certification was recently granted and that modifications including an attenuation sleeve to prohibit unwanted data relay have been adopted, it is clear that public fears over identity theft and invasion of privacy persist. Clearly more time must be taken to test new cards to assuage a worried public.
- g) **Passport backlogs** – Both Canada and the United States have been struggling to meet unprecedented demand for passports since WHTI implementation in the air mode. Given that there was no corresponding increase in air travel to explain the increase in passport applications, it is clear that confusion over border documentation requirements and implementation dates is driving this demand. More time to develop and test alternative documents would give would-be border crossers time to obtain other options and would alleviate the pressure on the passport offices of both of our countries.
- h) **Public Awareness and Promotion Campaigns** – Changes in the parameters of WHTI requirements, exemptions for minors and groups of teens in certain situations, along with varying and vague dates for implementation at the sea, land, and air ports of entry have contributed to public confusion and anxiety about what they will be asked to present at the border. Several border crossings are reporting decreased traffic flows as high as 15% - largely attributable to the ambiguity surrounding WHTI. The NPRM does not indicate that DHS and State have budgeted for or developed a clear plan for communicating documentation requirements to the general public. It is imperative that a clear implementation schedule be explained and that document options be promoted and made widely available. The NPRM announcement of slightly different documentation requirements in January 2008 to be followed by full WHTI implementation “*sometime*” in the summer of 2008 is only adding to public confusion and makes a clear communications plan –organized in conjunction with Canada – even more urgent.
- i) **Shortcomings in Economic Impact Analysis** – We are concerned that the economic impact analysis does not address the breadth of the impact WHTI will

inevitably have on both countries when implemented at the land border. The focus of the analysis has been narrowly limited to the estimated cost to U.S. citizens to acquire new documents, the costs incurred by the administration to provide the documents, and the net impact to the U.S. economy of foregone travel by non Americans.

There are several problems with this oversimplification. The overarching problem is one defined directly in the working paper (*Using Probabilistic Terrorism Risk Modeling For Regulatory Benefit-Cost Analysis*) which accompanies the NPRM. On page xii, it states, “ideally, decisions about terrorism security regulations and policies would be informed by true benefit cost analyses in which estimated benefits are compared to costs. Such analyses for terrorism security efforts face substantial impediments stemming from great uncertainty in the terrorist threat and the very low recurrence interval for large attacks.” In other words, the likelihood and costs of a terrorist attack are theoretical and difficult to quantify whereas the costs of WHTI will be very real and are quantifiable and yet efforts to quantify these costs have been extremely short-sighted and limited in scope.

First, it has recently been reported that the actual cost that will be incurred by the U.S. administration to meet passport demand will cost the government an estimated \$944 million over three years. This is more than three times the amount of State Department’s original estimate.

Second, the dismissal in the NPRM that tourism losses will be recouped by intra-country travel is not sufficient. A recent Conference Board of Canada study concluded that the Canadian and American tourism industries stood to lose \$3.2 and \$2 billion, respectively, between 2005 and 2010.

Third, the sheer magnitude of our trading relationship and the extent of our economic integration demands that the impact on commerce be thoroughly reviewed. In 2006, our countries enjoyed \$627 billion in two-way trade - the majority of which occurs over the land border. Such figures would seem to suggest that much is at stake if anything changes in the current border regime. Manitoba and the Manitoba Trucking Association are integral players in this relationship with Manitoba forming an important section of the Mid-Continent Trade Corridor. Business entities are already reporting that changes to border procedures are undoing many of the advances that NAFTA brought and are adding to increased costs. These do not appear to have been taken into account. Page 25 of the aforementioned working paper states that the estimates of WHTI costs “may not fully capture other costs that WHTI-L [land] could impose, such as subsequent reductions in commerce with Canada and Mexico stemming from the impediments posed by the greater cross-border travel documentation requirements.”

Fourth, given that the Mexico- U.S. border is substantially different from the northern border and that documentation requirements for Mexicans to enter the

United States will remain the same, it would also seem prudent to prepare separate analyses for the two borders.

Finally, it should be recognized that homeland security measures impose less tangible costs. The cost of inconvenience and the increased level of anxiety that now accompanies border crossings for many travelers are hard to quantify.

- j) The Unique Nature of the Land Border** – Although State officials have claimed that the implementation of the WHTI for air travel has been “virtually problem-free,” we know that air crossings between Canada and the United States comprise only 12% of border crossings. Furthermore, air travelers are qualitatively different from land border crossers in that most already held passports, the cost of acquiring a passport was not an impediment and air travel – by its nature – is *not* spontaneous.

The land border, however, is where the bulk of the interaction between our two countries occurs. The majority of products we exchange are shipped across the land borders and the majority of people traverse the land border to work, visit friends, attend churches, community and sporting events. Most of these travelers would not require a passport elsewhere and frequently enter the other country for less than a 24-hour period. The integration of our local economies and social networks has developed such that this is the norm.

In terms of travel between Manitoba and Minnesota, Manitoba accounted for 549,000 person visits to Minnesota alone in 2005 – more than 318,000 of these were same day visits. The Mall of America, located in Minneapolis- St. Paul, boasts that Canadians are the “top spenders of all international visitors.” Manitoba farmers cross the border daily to buy parts and supplies for agricultural machinery from businesses in North Dakota and Minnesota. Manitobans spend weekends in Grand Forks on shopping trips. Americans come from all over the United States to enroll their children in music camp at the International Peace Garden that straddles the Manitoba/ North Dakota border and then continue on with their families to vacation in Canada.

The special relationship between our jurisdictions has also resulted in several unique cooperative arrangements that help ensure Canadian resources are available should they be needed in times of crisis. The Western Canadian Premiers and the Western U.S. Governors have signed an agreement to facilitate cross-border cooperation in fighting wild fires. It is important that even once WHTI is fully implemented, that special protocols or alternative procedures be established for emergency personnel to ensure that urgent needs – on either side of the border – can be responded to quickly – whether emergency crews possess the requisite documentation or not.

The existence of the Legislators’ Forum – a group of legislators from Minnesota, North Dakota, South Dakota and Manitoba who have been meeting annually for the past seven years to discuss issues of mutual concern – is a testimony to the type of community and camaraderie that straddles our border. At their recent

meeting in Pierre, SD, they discussed the WHTI, their fears about the threat to privacy, and expressed concern about the “unintended consequences on good neighbors.”

Conclusion

As Manitoba has stated in our prior submissions, it remains questionable whether the necessary technology and infrastructure will be in place at land border crossings in time for the implementation date currently envisioned. Without this important step, it is questionable whether the efficient and timely crossing of secure travelers and trade can be assured.

It is also vitally important that both of our countries be confident that acceptable documentation is in the hands of a critical mass of would-be travelers by the implementation date. It is vitally important that new document systems be piloted, tested and assessed well in advance of the implementation date. It is imperative that a commitment be made to inform the public of all requirements and dates in a clear and widespread fashion. The United States and Canada need to come to mutual agreement on a series of benchmarks that would signify our readiness to implement WHTI.

Our cross-border relationship is based on strong family, community, and economic ties and these should not be jeopardized. The very creation of the Security and Prosperity Partnership points to the recognition of how entwined our security and prosperity are. Continued investment in Smart Border programs like FAST and NEXUS, as well as support of developing enhanced driver licenses will demonstrate to our citizenry that we are committed to a risk management approach and – most importantly – to upholding the most envied – and prosperous -relationship in the world.

Sincerely,

“Original signed by”

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