



Competitiveness, Training and Trade
301 Legislative Building
450 Broadway
Winnipeg, Manitoba
CANADA R3C 0V8

Comment Submitted by: The Province of Manitoba (Canada)

RE: Documents Required for Travelers Arriving in the United States at Air and Sea Ports of Entry from Within the Western Hemisphere

To:

Department of Homeland Security

Department of State

Docket Number: USCBP 2006-0097

September 25, 2006

Summary of Position

The Province of Manitoba, along with its 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.

We are not confident that the Notice of Proposed Rulemaking reflects sufficient preparation, analysis and justification for an implementation date of January 8, 2007. In October 2005 we submitted a comment on the Advanced Notice of Proposed Rule Making (ANPRM) regarding the Western Hemisphere Travel Initiative (WHTI). In that submission we made the following recommendations:

- 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 northern U.S. 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) explore the use of enhanced driver licences as alternative documents.**

The Province of Manitoba stands by our October 2005 recommendations and offers the following response to this Notice of Proposed Rulemaking.

Key Recommendations:

- 1) The deadline for presentation of passport or alternative documents at all ports of entry (POEs) should be harmonized to allow sufficient preparation time for document processing and expansion of border infrastructure. We support efforts to delay this deadline to 2009;**
- 2) The economic impact analysis conducted for the Air and Sea environment was insufficient and relied on flawed assumptions. A delayed deadline would ensure that a more thorough analysis is done for both Air and Sea POEs and provide sufficient time for a proper study of implementation at land borders;**
- 3) Trusted Traveler Programs (such as NEXUS and FAST) must be widely available and operational before WHTI is implemented at any border; and**
- 4) Options for continued exploration of other alternative documents (such as enhanced, secure driver licenses) must remain open and be actively explored.**

The rationale behind these recommendations is provided below.

State of Preparedness

Manitoba was pleased to see that the Departments of Homeland Security and State had responded to the many submissions made to the ANPRM recommending delayed implementation of Air and Sea regulations. Regrettably, while it may allow for the return of holiday travelers, the decision to delay by only one week will do little to mitigate the confusion at the ports of entry when the new rules do come into effect. The seven day delay does not provide Air and Sea travelers sufficient time for application and processing of required documentation, nor does it allow sufficient time for the development of alternative documents or an expansion of current trusted traveler programs.

Despite continued assurances from many quarters - including Secretary of State Condoleeza Rice - that a passport would not be the only acceptable document, an alternative has failed to be developed and/or made available fully one year after the Advanced Notice of Proposed Rulemaking was published and nine months after the announcement of the proposed People Access Security Service (PASS) card.

A review of actions undertaken for the implementation of the Western Hemisphere Travel Initiative conducted by the U.S. Government Accountability Office this past June found that little had been done to bring an end to the confusion caused by the new regulations. The report 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.

With less than four months to go before the first phase of the regulations takes effect at air and seaports, the fact that no such card is ready virtually ensures it will not be in the hands of potential travelers in time to be useful. This raises considerable doubt as to whether or not the important decisions about technology, resources, and infrastructure can be worked out in time to meet the proposed land deadline. At this point it appears that the administrative deadline of January 8, 2007 cannot be met and, furthermore, given the complexity and breadth of scope of a land border implementation, the overall implementation date of January 1, 2008 also cannot be met. An overall delayed implementation date – at least until September 2009, as promised in several legislative measures, would seem both prudent and wise.

On August 30, 2006, the Midwestern Legislative Council of the Council of State Governments (MLC), of which Manitoba is an associate member, passed a resolution calling for an eighteen-month delay in the implementation of the WHTI to allow for the development of secure alternatives and exploration of pilot projects.

Shortcomings of Economic Analysis

The August 2006 Regulatory Assessment for the NPR is flawed in many respects. First, an assessment of such variables as non-discretionary business and leisure travel requires the development of a unique methodology. Use of traditional economic theory of increased cost reducing demand is not sufficient.

Second, the analysis only quantifies the direct cost of the proposed rule upon US travelers (i.e. the cost for would-be Air and Sea travelers to acquire a passport). Only passing consideration is given to the myriad of tourism-related businesses who stand to suffer tremendous losses if any reduction in travel occurs as the result of an additional documentation requirement. While the industries are cited: accommodation, travel agents, dining service, retail shopping, tour operators, scenic and sightseeing transportation, and hired transportation, it is stated that these will only be “indirectly” affected. Notably most of these industries are considered to be small and medium enterprises (SMEs), yet the assessment states that it has deemed that the SME sector will not be directly affected by the requirement change and, further, if specific examples of direct impact are not provided to DHS and State by way of the Notice of Proposed Rulemaking, that they may certify there is not a significant impact on SMEs.

Third, the assessment suggests that losses incurred by a reduction in international travel dollars to the United States tourism industry would likely be recouped by an increase in domestic travel spending. This assessment is offered in spite of the observation, “we have only rough estimates of how many people travel, where they come from, and where they go. We know even less about how they will alter their behavior if they do, in fact, forego obtaining a passport.” (p. 2-71) Such a statement belies the integrated nature of our tourism market and does a tremendous disservice to the joint marketing efforts undertaken by state-provincial partnerships promoting “two-nation vacations.”

Fourth, the cost of mounting the necessary public awareness campaign has also not been assessed. Such a campaign is crucial to prevent confusion and increase preparedness among the traveling public and will be absolutely imperative for changes to the land border where the majority of travelers currently do not have the requisite documents.

Finally, the economic analysis does not take into account longer-term potential damage to trade and investment that may occur as a consequence of altering the traditional values that have been underscored of the Canada-U.S. relationship.

Alternative Documentation

In the Notice of Proposed Rulemaking, frequent reference is made to the 9-11 Commission's recommendation to remove the "Western Hemisphere exemption" as the reason for the change in documentation requirements. In this context, it is important to note that the Commission also contained the following recommendation:

- **To balance this measure, programs to speed known travelers should be a higher priority, permitting inspectors to focus on greater risks. The daily commuter should not be subject to the same measures as first-time travelers. An individual should be able to pre-enroll, with his or her identity verified in passage.** Updates of database information and other checks can ensure ongoing reliability. The solution, requiring more research and development, is likely to combine radio frequency technology with biometric identifiers.³⁷

The focus of efforts to "pre-enroll" known travelers has already begun in various ways, but more time is needed to ensure they are able to fulfill the requirements of this recommendation.

NEXUS: Manitoba was pleased to see that the NEXUS Air card will be an accepted document, in lieu of a passport, when the air and sea regulations take effect. (This was one of our recommendations - #3 above). The state of the program and the number of enrollees, however, provides further argument for delayed implementation of WHTI at Air and Sea ports of entry. According to a presentation by Customs and Border Protection (CBP) at the Border Trade Alliance in Washington, D.C. on September 11, 2006, NEXUS Air is currently operational at only one airport - Vancouver, British Columbia. The current number of enrollees in the program is only 7,000. The CBP presentation stated that NEXUS Air will "soon" be expanded to all airports, yet it was not clear whether this would occur in time for January 2007.

CBP also indicates that it expects NEXUS and FAST cards will be deemed acceptable documents for crossing at land border ports of entry and, ultimately, that all of these programs would be combined into one –with one card – through the Global Enrollment System (GES). While all of this is promising news to Manitobans, it still means very little when no NEXUS or FAST crossing sites exist at Manitoba crossing points. The CBP presentation stated that NEXUS land currently operates at 11 crossings with 13 dedicated lanes.

While plans to expand NEXUS Land to 5-6 more locations through the use of flex-lanes were announced, the fact that NEXUS Air is being included as an alternative in this NPR before it is fully operational raises considerable concern that the NEXUS Land program will also not be ready to meet a land crossing deadline. NEXUS Land just announced that it had reached 100,000 enrollees, yet it has taken four years to reach that number. This is not a sufficient demonstration that the outstanding number of eligible trusted travelers could be enrolled in a timely manner. A card cannot be presented as a true alternative if it is not actually available to the entire traveling public. It would seem prudent to wait until the program has been fully funded and is fully operational at all ports of entry before a new border regime is initiated.

The September 21, 2006 announcement that NEXUS Land had enrolled its 100,000th member contained an important reminder about the proper management of the Canada – U.S. border:

"This milestone in NEXUS participation demonstrates our strong working relationship with Canada and a strong track record in implementing technology at the border to both secure and facilitate legitimate trade and travel," said Commissioner Basham. We look forward to building on this success.

The way to build on this success is to remember that NEXUS was an initiative of the Smart Border Declaration's 32-point action plan and stems from the Canada-U.S. Accord on our Shared Border. NEXUS "enables the two nations to concentrate their efforts on potentially high-risk travelers and goods, thereby enhancing security and protection standards at the border."

PASS (People Access Security Service card)

The PASS card was announced in January 2006 yet disagreements over technology and design have prevented this initiative from moving forward. Although indications are that the rule will be issued during the last week of September, this will be too late for those who had hoped such a card may be an option for the air and sea environment. The Air and Sea NPR states "use of this alternative passport card was rejected for the air and sea environments for a number of reasons ...there is not sufficient time for the Department of State to develop and issue the PASS card by that time." The January 8, 2007 deadline is an administrative deadline only and could be extended to allow for development of this option.

Secure Driver Licenses

Manitobans continue to express support for development of enhanced driver licenses that would address the security concerns expressed by the United States and Canada and meet the requirements for cross border travel. We are encouraged by the pilot projects that are being explored for Michigan/Ontario and Washington/British Columbia for the use of enhanced, secure driver licenses as documents for cross border travel. The Air and Sea NPR does not make reference to continued exploration of other alternative documents or pilot projects. We believe that this should remain a viable option, particularly given the ongoing discussions that are occurring between the United States and Canada about document standards.

Tourism Impacts

A requirement for Americans and Canadians to present a passport or other new document when entering the United States will put a severe damper on the tourism choices made by both Americans and Canadians—as well as on the tourist revenues of both countries. We are, after all, each other's most frequent visitors and guests. Proximity, affordability and ease of access are the key aspects of our joint tourism.

In 2004, residents of Canada made 35.9 million trips to the United States and put \$11.7 billion USD into American tourism industry cash registers. That is \$2.1 billion USD more than American visitors spent in Canada. Manitoba is no exception to this rule. While the majority of our visits were to nearby, northern tier states, the bulk of money spent was in destinations further away to which people fly. Day trip spending exceeded \$38.5 million USD while spending on overnight trips (most to fly-in destinations) was in excess of \$89M USD. In 2004 Manitobans made 27,700 visits to Florida and spent almost \$28M (excluding airfare). Figures for California were similar. Manitobans also made 18,200 visits to Texas and spent more than \$26M there. Almost 24,000 visits were made to Nevada where more than \$19M was spent.

The Travel Industry Association of America has stated that “Canada is our biggest market.” The United States tourism industry is already losing market share in the world travel market; its share slipped from 9 percent in 2000 to 6 percent in 2005 and it has fallen from second to fourth place in popularity of worldwide destinations. Confusion over documentation requirements and the expenditures necessary to meet them are surely contributing to that decline. Leaders of the U.S. tourism business have launched the Discover America Partnership to promote travel to the United States. Commerce Secretary Carlos Gutierrez has recently agreed to represent the travel industry in discussions with other U.S. federal agencies as they seek funding for promotion and push for friendlier entry processes. U.S. tourism executives have stated they are afraid the WHTI will significantly reduce the 15 million trips that Canadians made to the United States in 2005. The department of tourism in Minnesota - one of our bordering states - has listed the Western Hemisphere Travel Initiative as its top issue. (In 2004, Manitobans made a total of 606,300 visits to Minnesota and spent \$75M there)

Closing

The NPR for Air and Sea travel was published less than one month after notification that certain Canadians – for reasons that are not clear – would soon be enrolled in the U.S. Visit Program. This notice was then followed by the announcement from the US Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) that effective November 24, 2006, each air passenger will be charged an additional \$5.00 and each maritime vessel \$488 when arriving at a U.S. port of entry. Such measures depart from the historic cooperation that has characterized our relationship; it is to our mutual interest reduce impediments to the cross border flow of legitimate goods and people.

Canadians and Manitobans have consistently demonstrated our commitment to a secure border and to working with our American neighbors to further bolster our security. We are concerned about plans for border management that have not yet been adequately demonstrated to improve border security and are the subject of objections from a myriad stakeholders and interest groups.

As Manitoba stated in October 2005, it is still apparent that neither the necessary analysis nor technology nor infrastructure will be in place in time to ensure the efficient and timely crossing of secure travelers and trade. Our cross-border relationship is based on strong family, community, and economic ties and these should not be jeopardized. We would like to see Canada and the United States continue to invest in the implementation the Smart Border initiative (e.g., expanding the FAST and NEXUS programs) and pledge to assist states and provinces in their work to strengthen foundation documents that are used to obtain passports and other forms of identification. Continued investment in risk management techniques should be the priority, rather than investing in initiatives that may not improve security, and will disrupt the flow of trusted travellers and trade.

We urge the U.S. Departments of Homeland Security and State to review the assumptions and shortcomings of the economic analysis that accompanied the Air and Sea Notice of Proposed Rulemaking (NPR). It is particularly important that a well-thought out, thorough, methodologically sound, and empirically substantiated analysis be undertaken for the land border.

In his July 2006 meeting with President Bush, Prime Minister Harper stated, “if the fight for security ends up meaning that the United States has become more closed to its friends, then the terrorists have won.” Manitoba is confident that Canada and the United States can work together in the spirit of cooperation that has been the hallmark of our relationship and find a workable solution for border security.

Sincerely,

(Original signed by Rosann Wowchuk)

for

Scott Smith
Minister of Competitiveness, Training and Trade
Government of Manitoba
301 Legislative Building
450 Broadway
Winnipeg, Manitoba
CANADA R3C 0V8
Tel: (204) 945-3788
Fax:(204) 945-1383
E-mail: minia@leg.gov.mb.ca

This submission was endorsed by:

Association of Canadian Travel Agencies (Manitoba Region)

Brandon First

Brandon Keystone Center

Brandon Tourism

Business Council of Manitoba

Canadian Association of Agri Retailers

Destination Winnipeg

Economic Development Brandon

International Peace Garden

Manitoba Agriculture Retailers

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