

WINDSOR-ESSEX REGIONAL Chamber of Commerce

August 24, 2007

U.S. Customs and Border Protection
Office of International Trade
Office of Regulations and Rulings
Border Security Regulation Branch
1300 Pennsylvania Ave., NW (Mint Annex)
Washington, D.C. 20229

To:

Michael Chertoff, Secretary of the Department of Homeland Security
Henrietta H. Fore, Undersecretary of State for Management

From:

Windsor-Essex Regional Chamber of Commerce

Regarding:

Regulatory Information Number 1651 – AA 69

USCBP-2007-0061

Western Hemisphere Travel Initiative

On behalf of the Windsor-Essex Regional Chamber of Commerce, please accept our comments on the Notice of Proposed Rulemaking (NPRM) pertaining to the implementation of the land and sea portions of the Western Hemisphere Travel Initiative (WHTI).

As the “Voice of Business,” the Windsor-Essex Regional Chamber of Commerce represents over 1,400 business members in the Windsor and Essex County region who collectively employ more than 80,000 people. Our membership profile truly represents a cross-section of the business interests in our community.

Our Chamber is also a member of the Business for Economic Security Tourism & Trade (BESTT) Coalition representing 300,000 businesses across North America. With the coalition we share a common concern about the ramifications of the WHTI as it pertains to the northern border region. Our Chamber is also working closely with the Canadian Chamber of Commerce in addressing cross border issues. This submission is based on our common assessment of the NPRM and is in full support of BESTT and the Canadian Chamber of Commerce submissions.

As residents of and business owners living in a border community we have developed great personal relationships, enjoy cultural and sporting events and do business on both sides of the border every day.

Our Chamber supports the intentions of the U.S. government to address all legitimate security threats to the United States, including those pertinent to our region. Our combined goal is to ensure that we keep our important cultural and economic ties while still addressing the legitimate security concerns of both countries.

We believe there are ways to address these concerns that increase our security, while still ensuring the flow of people and trade.

Our region's two border crossings have continued to experience a decline in passenger traffic. This year the decline amounted to 10% at the Ambassador Bridge, North America's busiest border crossing, and 23% at the Detroit-Windsor Tunnel.¹

In 2005 there were an estimated 32 million trips from the U.S. to Canada, and an estimated 38 million trips from Canada to the U.S. An estimated 75% of these trips are made crossing the Canada - U.S. land border.

The economy of Southeastern Michigan receives \$321.7 million every year from Canadian tourists. Canadian trade supports 147,000 jobs in Michigan.²

These statistics exemplify the significance of keeping the border open for tourism and trade.

Windsor-Essex Regional Chamber of Commerce Response to the NPRM

The Chamber is pleased to see that the following areas are being addressed:

- Children have been removed from the WHTI requirements
- Ease of crossing has been assured for Native North Americans
- Support for drivers licenses as an alternative to the passport

The support for drivers licenses, especially those issued by the Provinces and Territories of Canada, is a change in policy we are extremely pleased to see. We encourage DHS to continue to promote this alternative and to implement WHTI only after these forms of ID are available and in wide circulation.

The Chamber is concerned with the following areas specified in the NPRM:

¹ BTOA Traffic Figures, May 2007

² Detroit Regional Chamber of Commerce, Canadian/American Border Trade Alliance (as quoted by the Detroit News, *Passport Law Could Threaten Local Business*, August 15, 2006)

- There is no firm implementation date for the land and sea rules
- Lack of definition for “availability of WHTI compliant documents”
- Problems with proposed phased implementation
- Lack of a publicity campaign about the rules and timelines for implementation
- Lack of sufficient infrastructure to implement the new rules
- No appeals board for NEXUS provided
- No clear way of renewing NEXUS cards other than reapplying
- No plan to address the significant increase the plan will create in wait times

Addressing the concerns:

No Firm Implementation Date

One of the most frustrating issues surrounding the Western Hemisphere Travel Initiative has been the lack of a clear implementation date. While Congress agreed to a June 2009 date for final implementation, DHS has been extremely reluctant to provide that date, and has continued until this NPRM to state January 2008 as a deadline.

People on both sides of the border are confused as to which ID is needed for different types of crossings, and when current rules will change.

The NPRM lists a number of existing and new documents that will be acceptable for entering the U.S. Most of these documents need to be developed and all should be available and in wide circulation prior to implementation. More time is needed by states, provinces and territories to engage with DHS and the Canadian government, to create agreements on the format of the licenses, and implement these programs.

The Windsor-Essex Regional Chamber of Commerce believes that there must be a clear date the rules will be in effect. To meet the timelines for development of alternative documents stated in the NPRM, the Chamber strongly believes the implementation date for WHTI land and sea rules should be June 2009.

Lack of Definition for “Availability of WHTI Compliant Documents”

One of the factors in determining the final rule date is the “availability of WHTI Compliant Documents on both sides of the border.”³ From the NPRM it is not clear what is meant by “availability.”

Since availability of WHTI compliant Documents is one of the main factors in determining the final implementation date for WHTI, more information must be provided to ensure that final date is as objective as possible. The criteria for WHTI compliant documents must be clearly defined.

Problems with Proposed Phased Implementation

³ In section IV, subsection 2 (Implementation and Effective Date of Final Rule), page 35 of the NPRM, it is stated that the final rule will be implemented after reviewing a number of factors, but most likely in summer 2008.

The “phased implementation” called for in the NPRM does not address certain modes of travel, including:

1. Ferry Boat Operations: Currently, the private and public ferry fleet in the U.S. and Canada relies on an oral declaration of citizenship in order to move people quickly and efficiently through its system. By implementing WHTI on January 31, 2008, without plans for addressing the problems specific to this mode of transportation, and without a plan for addressing the severe economic hit these systems will take, DHS is unintentionally hurting this mode of transportation.
2. Vehicle Crossings: DHS expects that lines at the land crossings will decrease with the implementation of WHTI. When a full document check was implemented in the summer of 2006 in New England, lines actually became much longer and fewer people were able to cross because of delays.

A common implementation date of June 1, 2009 would streamline the proposed phased implementation plan. It would also allow time for all forms of ID to be developed and put into wide circulation as well as capacity problems at the border crossings to be addressed.

More Publicity Needed for the Rules and the Timelines of WHTI Implementation

The Windsor-Essex Regional Chamber of Commerce is extremely concerned that the NPRM offers no program or funding mechanism to ensure the public is fully aware of the proposed rules.

This is complicated by the “phased implementation” which has been announced. By creating two separate dates for implementation, we are further adding to the level of confusion and uncertainty the average citizen on both sides of the border will face.

This is evidenced in the BESTT Coalition’s Zogby International poll⁴, in which neither Americans nor Canadians were familiar with proposed documentation changes along the border. Of Americans, 87% say they are either not familiar (59%) or somewhat familiar (28%) with changes in requirements. Of Canadians, 82% are say they are either not very (40%) or somewhat familiar (42%). Non-passport holders from both countries are least likely to be at all familiar.

The Chamber strongly encourages the DHS to formulate and implement a public awareness campaign for the new WHTI rules and timelines.

Lack of Sufficient Infrastructure to Implement Rules

With new IDs, RFID-reader technology at most border crossing points, state-issued IDs to be negotiated and many more items of concern; more time is needed to put in place and test the required WHTI infrastructure. By implementing on June 1, 2009, DHS has the time needed to ensure sufficient infrastructure and fully prepare for the new rules. Implementation prior to DHS being fully ready at all border crossings will cause

⁴ Zogby International Poll can be accessed through the BESTT Coalition website at <http://www.besttcoalition.com/>

severe delays at border crossings and create tremendous drops in the number of crossings.

No Appeals Board for NEXUS Provided

One of the biggest complaints about the NEXUS program is the lack of an appeals process for those who have had their card revoked. A process whereby former cardholders can apply for reinstatement is vital to the effectiveness of the program, especially in border communities where people cross frequently.

The Chamber would recommend the creation of an Appeals Board as part of the implementation of WHTI.

No Clear Way of Renewing NEXUS Cards, Other Than Re-Applying

Thousands of individuals are currently renewing their NEXUS cards, as the initial members reach their five-year mark. Unfortunately, the renewal mechanism is the same as the initial mechanism for applying for cards, essentially meaning that those in the program must re-apply at the end of the five-year period.

The Chamber recommends a clear NEXUS renewal process that ensures no down time for NEXUS members, while addressing the legitimate security concerns of Canada and the United States. As more people enroll in this program, ensuring a streamlined way to renew will become more important.

Importance of Coordination with Canada

If the WHTI is very important for the security of North America it cannot be implemented in a vacuum. Our governments should dialogue and have healthy discussion about funding, partnership, marketing, and other aspects of the initiative. We wish to eliminate long delays, confusion and not to imperil the positive cross-border law enforcement relationships that have developed.

The U.S. government should work with Canadian officials to coordinate the implementation of WHTI.

Conclusion

There is logic in improving documentation requirements for border crossings. Events have shown that the threat of terrorism is real, and we must take national security very seriously; however, we must be careful not to forsake economic security in the process. There is merit in taking into consideration the full-range of policy options at our disposal in implementing a program to verify nationality and identity. For a new border-crossing policy to succeed, WHTI needs to be marketed successfully and developed with comprehensive economic data and stakeholder input, including the Canadian government.

SUMMARY OF RECOMMENDATIONS:

The Windsor-Essex Regional Chamber of Commerce believes that the DHS and the Department of State should:

1. Set June 2009 as the date the new rules will take effect, while ensuring both the U.S. and Canadian governments can meet the ID requirements of their citizens.
2. Clearly define the criteria for WHTI compliant documents.
3. Launch an awareness campaign immediately to ensure the traveling public knows when and how the new rules will be implemented.
4. Create a clear NEXUS renewal process that ensures no down time for NEXUS members, while addressing the legitimate security concerns of Canada and the United States.
5. Work more closely with Canadian officials to coordinate the implementation of the WHTI.