

Western Hemisphere Travel Initiative

By Stephanie Brophy
01/23/2007

As of January 23, 2007 United States citizens traveling by air between the United States, Canada, Mexico, Central and South America, the Caribbean and Bermuda are required to present a valid U.S. passport, or other accepted document, to enter or re-enter the United States. This is the first phase of the Western Hemisphere Travel Initiative (WHTI). The WHTI is an initiative to strengthen border security and to facilitate entry into the United States for U.S. citizens and legitimate foreign nationals (nonimmigrant aliens) by providing standardized, secure, and reliable documentation which will allow the Department of Homeland Security (DHS) to streamline the process of rapidly and accurately identifying a legitimate traveler without disrupting their movement, and identifying illegitimate travelers and halting their movements.

The WHTI was catalyzed by the findings and recommendations of the 9/11 Commission. Congress passed these particular recommendations into law in the Intelligence and Reform Terrorism Prevention Act (IRTPA) of 2004. Section 7209 of the 2004 IRTPA mandated that the DHS and the Department of State (DOS) develop and implement a plan to require U.S. citizens and foreign nationals to present a valid passport, or other acceptable document, that establish identity and citizenship for entry into the United States. Section 7209 also requires a program to expedite the entry of frequent travelers, including those who reside in border communities. Thus, the WHTI aims to maintain the free flow of trade, tourism, and commerce, while weeding out the bad guys.

The WHTI consists of two phases. The first phase (the "Air" phase), effective January 23, 2007, only affects documentation for air travel. The second phase of the WHTI affects sea and land travel. Tentatively, the second phase will be implemented January 1, 2008, one year from now; though recent legislative changes may permit a later deadline. It will require that all U.S. citizens traveling between the United States, Canada, Mexico, Central and South America, the Caribbean and Bermuda *by land or sea* show a valid passport, or other documents, as determined by the Department of Homeland Security.

The necessary/acceptable documents under the WHTI are as follows: First, and foremost, a U.S. passport issued to international standards is the preferred form of identity documentation because of its security features, its compatibility with current infrastructure in our ports of entry (POE), and its use of international standards and interoperability with all other countries. Second, United States Lawful Permanent Residents (LPRs) will continue to be able to use their Alien Registration Card (Form I-551) issued by the DHS. Third, the Passport Card (aka PASS card) will be accepted for land and sea travel. The PASS card is a limited use passport in card format (similar in size to a credit card). It is currently under development, and will cost less than a

traditional passport. At present, the DHS and DOS forecast that SENTRI¹, NEXUS², FAST³, and the U.S. Coast Guard Merchant Mariner Document will continue to be acceptable for their current uses. U.S. Armed Forces traveling on active duty will not be affected by the WHTI. They will continue to be exempt from passport requirements. Also, U.S. citizens traveling directly between the United States and its territories (Puerto Rico, Guam, U.S. Virgin Islands, the Northern Mariana Islands, and the American Samoa) will be able to continue using established forms of identification to board flights and for entry.

Under extenuating circumstances the new document requirements may be waived. Such circumstances include individual cases of unforeseen emergency and individual cases based on humanitarian or national interests. People without appropriate documentation who attempt to enter the U.S. will be referred for secondary screening at the POE. Custom and Border Protection (CBP) officers will evaluate any evidence of citizenship or identity the individual may have and will verify all information against available databases.

Previously, U.S. citizens, and some citizens of other countries in the Western Hemisphere, including Canadians and Mexicans with Border Crossing Cards (“laser visas”), have not been required to present a passport to enter the United States. The traveler was able to make a verbal declaration of citizenship, or show other forms of documentation to enter the country. Many of these previously accepted documents,

¹ SENTRI refers to the Secure Electronic Network for Traveler’s Rapid Inspection. It provides expedited Customs and Border Protection (CBP) processing for pre-approved, low- risk travelers. Applicants must voluntarily undergo a thorough biographical background check against criminal, law enforcement, customs, immigration and terrorist indices; a 10-fingerprint law enforcement check; and a personal interview with a CBP officer. Once an applicant is approved they are issued a Radio Frequency Identification Card (RFID) that will identify their record and status in the CBP database upon arrival at the U.S. port of entry. An RFID decal is also issued to the applicant’s vehicle. SENTRI users have access to specific, dedicated primary lanes into the United States.

² The Nexus Program (a U.S.CBP and Canadian Border Services Agency venture) allows pre-screened, low-risk travelers to be processed with little or no delay by U.S. and Canadian officials at designated highway lanes at high volume border crossing locations, at a NEXUS kiosk at the Vancouver International Airport, and at certain marine reporting locations in the Great Lakes and Seattle, Washington. In early 2007, NEXUS is being extended to seven airports in Canada. Approved applicants are issued a photo-identification/proximity card. Participants use the three modes of passage (air, land, sea) where they present their NEXUS card and make a declaration. They are then released unless chosen for a selective or random secondary referral. NEXUS members have crossing privileges at any air, land or marine ports of entry. Individuals may qualify to participate in NEXUS if they are a citizen or permanent resident of the United States or Canada, residing in either country, or if they are a citizen of another country who plan to temporarily reside lawfully in Canada or the United States for the term of their NEXUS membership, and who pass an Interpol criminal history check.

³ FAST stands for Free and Secure Trade. The FAST program is a Border Accord Initiative between the United States, Mexico, and Canada designed to ensure security and safety while enhancing the economic prosperity of each country. Mexico, Canada, and the U.S. have agreed to coordinate, to the maximum extent possible, their commercial processes for clearance of commercial shipments at the border. FAST promotes free and secure trade by using common risk-management principles, supply chain security, industry partnership, and advanced technology to improve the efficiency of screening and clearing commercial traffic at our shared borders. Eligibility of the FAST program requires participants-carriers, drivers, importers, and southern border manufacturers- to submit an application, agreement and security profile depending on their role in the Customs and Trade Partnership Against Terrorism (C-TPAT) and FAST programs. THE FAST program allows known low-risk participants to receive expedited border processing; thus allowing CBP the ability to focus their security efforts on high risk commerce, while ensuring the flow of legitimate, low-risk commerce.

such as birth certificates and driver's licenses, cannot be validated or verified in a timely manner. In addition, birth certificates and driver's licenses are prone to counterfeit and fraud. They are obtainable by terrorists and other dangerous people who wish to enter the country illegally.⁴ The fundamental, basic idea behind the WHTI is that border security will be significantly strengthened when all travelers present a single, secure document-the passport.

Newly issued U.S. passports use the digital image of the passport photograph as the biometric identifier⁵ and this is used with face recognition technology at the POEs to verify the identity of the passport bearer. These "electronic" passports are the same as a traditional passport with the addition of a small "chip" (integrated circuit) embedded in the back cover. This chip stores the same data displayed on the data page of the passport. Embedded technology, such as this, is an effective way to expedite the flow of traffic and strengthen border security.

The goal of increased border security is easily understood, but the two-tiered implementation of the WHTI elicits confusion among some travelers. The two-tiered approach is to 1) allow the public time to prepare and adjust to the new requirements and 2) allow the government time to modify the POE infrastructure. Airports are already equipped with the appropriate technology, whereas land and sea POE require infrastructure modifications. The most important thing to remember is that if traveling by air, either to or from the United States, you must show a passport, or equivalent. If traveling by land or sea, you are able to use the established forms of identification for the time being. The second phase of the WHTI, due to take effect January 1, 2008, will require the same secure documentation that is already required if traveling by air. Whether you are a traveler or prospective traveler, obtaining a passport is now a necessity.

There are significant economic concerns about the effect of the new passport requirements. The DHS has determined that the benefits-facilitation of travel and increased security in the air, land and sea environments-justify the potential costs. Roger Dow, President and CEO of the Travel Industry of America submitted written testimony to the House Judiciary Immigration, Border Security and Claims Committee voicing the travel industry's apprehension to certain aspects of the WHTI. In it he argued that many business and leisure trips may be cancelled due to a lack of proper documentation, confusion over rules, or an unwelcoming view of the United States.⁶ He preferred a single, unified deadline, rather than the opted for two-tiered approach. He also said that the federal government must carefully implement security measures so that they do not strangle legitimate commerce and travel across our borders, which he

⁴ Rosenweig, Paul. Secretary DHS. Testimony to the House Judiciary-Immigration, Border Security and Claims. June 8, 2006.

⁵ A biometric or biometric identifier is a measureable physical or behavioral characteristic of an individual, which can be used to verify the identity of that individual or to compare against other entries when stored in a database. Biometrics include face recognition, fingerprints and iris scans. .

⁶ Dow, Roger. President and CEO of Travel Industry Association of America. Testimony to House Judiciary Immigration, Border Security, and Claims. June 8, 2006.

fears the WHTI may do. This includes developing low cost, alternative travel documents, in cooperation with the Canadian government, for both Canadians and Americans. The focus was on the Canadian-American relationship because almost all other citizens, including Mexicans, are already required to present secure documentation that denotes identity and citizenship at the border. Dow also called for working with the private sector on an aggressive public outreach program. A public outreach program is still appropriate, considering that most people traveling by air already have passports; but the land and sea travelers, who will be effected next year, often do not have one because they were previously unnecessary.

Randy Williams, President and CEO of the Tourism Industry Association of Canada (TIAC) said that the confusion over the requirements was the biggest problem.⁷ He said that while the new passport requirement is a U.S. initiative, travelers on both sides of the border are required to comply. He claims that there has been no clear communications strategy surrounding the implementation from either government. However, Canadian passport applications shot up by 33% in November 2006, and December applications were up by 31%.⁸ Passport Canada acknowledged that their infrastructure is under a great deal of pressure due the volatile spike in applicants. This, though, is a short term issue, and passports have a long shelf life.

The WHTI is also a huge issue for border communities in Canada, the U.S. and Mexico. Border community business leaders are concerned that the WHTI may dampen the cross-border commerce that underpins many border cities, and could negatively affect low-income area families who have relatives in Mexico.⁹ Border communities rely on frequent, daily, and spontaneous travelers for much of their revenue. The travel behavior of frequent and daily border crossers will unlikely change, but the WHTI passport requirements will affect the travel behavior of spontaneous travelers who opt not to obtain a passport. The effects on border communities will be noticeable after the second phase, the land and sea phase, of the WHTI is implemented.

The WHTI is a robust travel initiative that modifies the travel relationship between the United States and its neighbors. But it also affects U.S. citizens, and has elicited civil liberty infringement concerns. The ACLU, the Citizens Against Government Waste (CAGW) and the CATO Institute oppose the WHTI and say that it undermines privacy, and provides little security.¹⁰ ACLU Legislative Counsel Timothy Sparapani said that the WHTI will not improve U.S. national security, that it will undermine the privacy of law-abiding Americans and create an ideal target for identity thieves. The WHTI vastly expands the use of biometrics and creates a database which the ACLU is concerned could be linked to private information. The ACLU also argues that the WHTI does not explicitly prohibit how the information can and cannot be used.

⁷ "Stop the Confusion Over Passport Requirements!" *Canada Newswire*. Ottawa. January 18, 2007.

⁸ Cheadle, Bruce. "Have Your Passports Ready." *The Canadian Press*. January 20, 2007.

⁹ Whittaker, Matt. "Rising Cost to Cross." *The Monitor*. October 15, 2006.

¹⁰ "ACLU and Allies Oppose Western Hemisphere Travel Initiative" September 7, 2006 at <http://www.aclu.org/safefree/general/26681prs20060907.html>

In addition, the ACLU also expressed concerns about a possible decrease in cross border commerce.

Travel documents are important weapons of terrorism. Terrorists use evasive methods (altered and counterfeit identification documents), and must travel clandestinely to meet, train, plan, and carry out their attacks. A terrorist has three main options to gain access to a country.¹¹ The first is to risk using a legitimate passport using his or her real name, and risk showing up on a database check. The second is to use other documentation that can be neither authenticated nor verified, such as birth certificates or driver's licenses. The third option is to enter illegally over the physical borders. For the terrorist, the optimum form of travel then is option two. The WHTI's requirement of a biometrically based passport lowers the risk of terrorist entry by removing option two. The Secure Border Initiative¹² aims to remove option three.

The WHTI will likely speed up traffic at POEs, rather than slow it down as some have worried. Under the WHTI requirements, the border inspector will not have to question and review in depth the authenticity of thousands of varieties of birth certificates and driver's licenses. They will be able to simply inspect a passport, or equivalent, that verifies citizenship and identity. Simple, secure and universal travel documentation will increase border security and efficiency at the POEs.

¹¹ Kephart, Janice. President 9/11 Security Solutions, LLC. Testimony to the House Judiciary Immigration, Border Security and Claims Committee. June 8, 2006.

¹² The Secure Border Initiative (SBI) is a comprehensive multi-year plan to secure America's borders and reduce illegal immigration which includes: more agents to patrol borders, secure ports of entry and enforce immigration laws; expanded detention and removal capabilities to eliminate "catch and release"; a comprehensive and systemic upgrading of the technology used in controlling the border, including increased manned aerial assets, expanded use of UAVs, and next-generation detection technology; increased investment in infrastructure improvements at the border – providing additional physical security to sharply reduce illegal border crossings; and greatly increased interior enforcement of our immigration laws – including more robust worksite enforcement.