



Privacy Impact Assessment
for the

Western Hemisphere Travel Initiative (WHTI)

In conjunction with the Final Rule (71 FR 68411), Documents
Required for Travelers Departing From or Arriving in the
United States at Air Ports-of-Entry From Within the Western
Hemisphere

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Abstract

The Bureau of Customs and Border Protection, Department of Homeland Security, in conjunction with the Bureau of Consular Affairs, Department of State, published in the federal Register a Final Rule to implement the Western Hemisphere Travel Initiative (WHTI) on November 24, 2006, which can be found at 71 FR 68411. The initial requirements of WHTI are the first phase in the implementation of new passport requirements for certain travelers to, and from, the United States as defined in the Intelligence Reform and Terrorism Prevention Act of 2004. This Privacy Impact Assessment (PIA) reflects WHTI as set out in the Final Rule and follows the initial PIA for WHTI on the notice of proposed rulemaking (NPRM), approved on August 11, 2006 and published on the DHS Privacy Office website, www.dhs.gov/privacy. This updated PIA reflects changes made to WHTI based upon changes in policy and amendments to statutory authority as well as in response to comments on the WHTI NPRM.

Introduction

As set out in the Final Rule, current regulations permit United States citizens and many nonimmigrant aliens from Canada, Mexico, and Bermuda to enter the United States without requiring the use of a passport when traveling within the Western Hemisphere. Before the Final Rule, United States citizens satisfied the CBP officer of his or her United States citizenship by providing proof of nationality (e.g., birth certificate), and government-issued photo identification (e.g., a driver's license) when arriving from within the Western Hemisphere. Likewise, nonimmigrant aliens from Canada and Bermuda provided adequate evidence of citizenship and identity. Mexican citizens arriving in the United States at ports-of-entry who possess a Form DSP-150, B-1/B-2 Visa and Border Crossing Card (BCC) did not need to present a valid passport if they came from contiguous territory.

Pursuant to Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) Pub.L. 108-458, 118 Stat. 3638, by January 1, 2008 Department of State (DOS) and Department of Homeland Security (DHS) must develop and implement a plan to require a passport or other alternative documents as the Secretary of Homeland Security may designate as denoting identity and citizenship from U.S. citizens and aliens previously exempted from the passport requirement under INA Section 212(d)(4)(B). Accordingly, in order to comply with its congressional mandate the Department of Homeland Security, Bureau of Customs and Border Protection and the Department of State, Bureau of Consular Affairs issued a NPRM to establish the first phase of WHTI that would require United States citizens and nonimmigrant aliens from Canada, Bermuda and Mexico entering the United States at air ports-of-entry to present, with certain limited exceptions, a valid passport. The Final Rule differs from the NPRM published in the *federal Register* on August 11, 2006, by finalizing new documentation requirements only for travelers arriving in the United States by air. The portion of the NPRM that proposed changes in documentation requirements for travelers arriving by sea will not be finalized under the rule. Requirements for United States citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico departing from or entering the United States at land and sea ports-of-entry will be addressed in a separate, future rulemaking.

Reason for Update

This WHTI PIA reflects the state of the Final Rule for air travel under WHTI issued November 24, 2006. Under this final rule, beginning January 23, 2007, United States citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico entering the United States at air ports-of-entry must generally present a valid



passport. Accordingly, virtually all aviation passengers and crew, including commercial flights and general aviation flights (i.e., private planes), who arrive at air ports-of-entry in the United States from countries within the Western Hemisphere, must possess a valid passport beginning January 23, 2007. The main exceptions to this requirement are for United States citizens who are members of the United States Armed Forces traveling on active duty; U.S. citizens who present a Merchant Mariner Document traveling in conjunction with maritime business; and travelers who present a NEXUS Air card used at a NEXUS Air kiosk.

This Final Rule does not change the documentation requirements for United States citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico who arrive at land or sea ports-of-entry. Based on DOS's recent proposal to allow the use of the Passport Card in the sea environment, the intent of Congress with respect to the land and sea environments (The Department of Homeland Security Appropriations Act of 2007 (Pub. L. 109-295, 120 Stat. 1355 (Oct. 4, 2006)) Section 546 amended Section 7209 of IRTPA and, in part, expressed the intent of Congress to have the requirements for land and sea implemented at the same time), and the public comments, DHS and DOS have decided to defer decisions on the proposed changes to documentation requirements for arrivals by sea. DHS and DOS will address arrivals by sea and land in a separate, future rulemaking.

Privacy Impact Analysis

Information Collection

As noted in the previous PIA, this rule expands the number of individuals required to submit passport information for travel within the Western Hemisphere, but does not involve the collection of any new data elements. Presently, CBP collects and stores passport information from all travelers that the Aviation and Transportation Security Act of 2001 (ATSA) and the Enhanced Border Security and Visa Reform Act of 2002 (EBSA) require to provide such information. CBP maintains this data in the Treasury Enforcement Communications System (TECS, a System of Records Notice for which is published at 66 FR 53029). For travelers who are not in compliance with the Final Rule for WHTI at an air port-of-entry, CBP will collect information directly from the traveler for entry into TECS.

Information Use

No new uses of information exist based on the changes in the Final Rule for WHTI. As stated in the PIA discussing the WHTI NPRM, the goal of the information collection is to screen all travelers arriving from foreign travel points to the United States to discover travelers that are identified as or suspected of being a terrorist or having affiliations to terrorist organizations, that have active warrants for criminal activity, that are currently inadmissible or have been previously deported from the United States, or that have been otherwise identified as potential security risks or raise a law enforcement concerns. WHTI is intended to enhance security efforts at our Nation's borders and expedite the movement of legitimate travel within the Western Hemisphere by reducing the number of different forms of identification and employing more readily verifiable forms of identification.



Information Disclosure

The Final Rule for WHTI does not envision new instances of information sharing. The information collected through WHTI may be shared with all component agencies within the Department of Homeland Security and with federal, state, local, tribal, and foreign law enforcement agencies on a specific need to know basis consistent with the component's or agency's mission. The sharing with external agencies includes every law enforcement agency in the federal government as well as those federal agencies mandated to ensure compliance with laws or regulations pertaining to entry or importation into the U.S., each of the fifty States, the District of Columbia, U.S. insular possessions and territories, and a majority of foreign nations with whom the U.S. maintains diplomatic relations. CBP transfers regularly this information to the Passport Records System at the Department of State.

Notice

Notice is provided through the publication of this PIA and the Final Rule publication in the federal Register (71 FR 68411, published November 24, 2006). Additionally, CBP established a web site [www.cbp.gov/xp/cgov/travel/vacation/kbyg/] to provide additional information to travelers about what documentation is required when traveling outside the United States.

Informed Consent

As described in the PIA associated with the NPRM, DHS uses and shares the collected information only for the purposes of border and immigration management, national security, and law enforcement. Individuals have no opportunity to consent to or refuse the use of their information for any of these purposes. There is no change to this factor as a result of the publication of the Final Rule for WHTI.

Redress

CBP has a Customer Satisfaction Unit in its Office of Field Operations to provide redress with respect to incorrect or inaccurate information collected or maintained by its electronic systems. If a traveler believes that CBP actions are the result of incorrect or inaccurate information, the traveler may direct inquiries to the Customer Satisfaction Unit at the following address: Customer Satisfaction Unit, Office of Field Operations, U.S. Customs and Border Protection, Room 5.5C, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229, fax (202) 344-2791. Individuals making inquiries should provide as much identifying information as possible regarding themselves to identify adequately the record or records at issue. The Customer Satisfaction Unit will respond to each inquiry.

Security

The Final Rule for WHTI does not change any aspects concerning the security for the systems underlying the implementation of WHTI. The underlying systems maintain audit trails or logs for the purpose of reviewing user activity. Additionally, these systems actively prevent access to information for which a user lacks authorization, as defined by the user's role in the system, location of duty station, and/or job position. Multiple attempts to access information without proper authorization will cause these systems to suspend automatically a user's access. Any misuse of the data collected subjects a user to discipline in accordance with the CBP Code of Conduct, which can include being removed from an officer's position.



Conclusion

This updated PIA focuses on changes to the Final Rule concerning WHTI to limit currently the application of the rule the air ports-of-entry. An analysis of the Final Rule concludes that while the Final Rule differs from the NPRM with respect to applying only to travelers at air ports-of-entry, the Final Rule does not change the associated privacy risks. WHTI involves the removal of an exception for United States citizens and certain foreign nationals from having to present a passport in connection with Western Hemisphere travel. These travelers must now present a passport (or an alternative identification as previously discussed) when traveling from points of origin both within and outside of the Western Hemisphere. By removing the exception for submitting passport information from United States citizens and certain foreign nationals traveling within the Western Hemisphere, DOS and DHS require these travelers to comply with the general requirement to submit passport information when entering the United States.

Responsible Officials

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Approval Signature Page

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