DEPARTMENT OF HOMELAND SECURITY
U. S. CUSTOMS AND BORDER PROTECTION

USCBP-2007-0061

RIN 1651-AA69

8 CFR Parts 212 and 235

DEPARTMENT OF STATE

22 CFR Parts 41 and 53

Documents Required for Travelers Departing From or Arriving in the United States at Sea and Land Ports-of-Entry from within the Western Hemisphere

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security: Bureau of Consular Affairs, Department of State.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), as amended, provides that upon full implementation, U.S. citizens and certain classes of nonimmigrant aliens may enter the United States only with passports or such alternative documents as the Secretary of Homeland Security designates as satisfactorily establishing identity and citizenship. This notice of proposed rulemaking (NPRM) is the second phase of a joint Department of Homeland Security (DHS) and Department of State (DOS) plan, known as the Western Hemisphere Travel Initiative, to implement these new requirements. This NPRM proposes the specific documents that, as early as January 2008, and no sooner than 60 days from publication of the final rule, U.S. citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico will be required to present

when entering the United States at sea and land ports-of-entry from Western Hemisphere countries.

DATES: Written comments must be submitted on or before [insert date 60 days after date of publication in the **Federal Register**].

ADDRESSES: Comments, identified by docket number USCBP-2007-0061, may be submitted by one of the following methods:

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- Mail: Comments by mail are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Office of Regulations and Rulings, Border Security Regulations Branch, 1300 Pennsylvania Avenue, NW (Mint Annex), Washington, DC 20229. Submitted comments by mail may be inspected at the U.S. Customs and Border Protection at 799 9th Street, NW, Washington, DC. To inspect comments, please call (202) 572-8768 to arrange for an appointment.

Instructions: All submissions regarding the proposed rule and regulatory assessment must include the agency name and docket number USCBP-2007-0061. All comments will be posted without change to http://www.regulations.gov, including any personal information sent with each comment. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read background documents or submitted comments, go to http://www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Department of Homeland Security: Colleen Manaher, WHTI, Office of Field Operations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, telephone number (202) 344-3003.

Department of State: Consuelo Pachon, Office of Passport Policy, Planning and Advisory Services, Bureau of Consular Affairs, telephone number (202) 663-2662.

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LIST OF SUBJECTS

Abbreviations and Terms Used in This Document

ANPRM - Advance Notice of Proposed Rulemaking

BCC - Form DSP-150, B-1/B-2 Visa and Border Crossing Card

CBP - U.S. Customs and Border Protection

CBSA – Canadian Border Services Agency

DHS - Department of Homeland Security

DOS - Department of State

FAST - Free and Secure Trade

FBI – Federal Bureau of Investigation

IBWC – International Boundary and Water Commission

INA - Immigration and Nationality Act

IRTPA - Intelligence Reform and Terrorism Prevention Act of 2004

LPR - Lawful Permanent Resident

MMD – Merchant Mariner Document

MODU - Mobile Offshore Drilling Unit

MRZ – Machine Readable Zone

NATO – North Atlantic Treaty Organization

NEPA – National Environmental Policy Act of 1969

NPRM - Notice of Proposed Rulemaking

OARS – Outlying Area Reporting System

OCS - Outer Continental Shelf

PEA – Programmatic Environmental Assessment

SENTRI - Secure Electronic Network for Travelers Rapid Inspection

TBKA – Texas Band of Kickapoo Act

UMRA – Unfunded Mandates Reform Act

USCIS – U.S. Citizenship and Immigration Services

US-VISIT - United States Visitor and Immigrant Status Indicator Technology Program

WHTI - Western Hemisphere Travel Initiative

I. PUBLIC PARTICATION

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. DHS and DOS also invite comments that relate to the economic effects or the federalism implications that might result from this proposed rule. Comments that will provide the most assistance to DHS and DOS in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

This notice includes proposed regulatory text that represents the initial preference of DHS and DOS unless otherwise identified, but the Departments also seek comment on proposals and ideas discussed in the preamble, but not contained in the regulatory text because the Departments are interested in comments on these alternative approaches and may include these alternatives in the final rule. See ADDRESSES above for information on how to submit comments.

II. BACKGROUND

The current document requirements for travelers entering the United States by sea or land generally depend on the nationality of the traveler and whether or not the traveler

is entering the United States from a country within the Western Hemisphere.[1] The following is an overview of the current document requirements for citizens of the United States, Canada, British Overseas Territory of Bermuda, and Mexico who enter the United States at sea or land ports-of-entry. The requirements discussed in this section are the subject of proposed changes under this NPRM.

A. Current Document Requirements for U.S. Citizens Arriving by Sea or Land

In general, under federal law it is "unlawful for any citizen of the United States to depart from or enter ... the United States unless he bears a valid United States passport."[2] However, the statutory passport requirement has been waived in the past for U.S. citizens traveling between the United States and locations within the Western Hemisphere by land or sea, other than from Cuba.[3] Currently, a U.S. citizen entering the United States by land or sea from within the Western Hemisphere is inspected by a Customs and Border Protection (CBP) Officer. To enter the United States in conformance with the Immigration and Nationality Act (INA), these U.S. citizens must satisfy the CBP Officer of their citizenship.[4] In addition to assessing the verbal declaration and examining whatever documentation a traveler may present initially, the CBP Officer may ask for additional identification and proof of citizenship until such time as the CBP Officer is satisfied that the traveler seeking entry into the United States is a U.S. citizen.

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[1] For purposes of this proposed rule, the Western Hemisphere is understood to be North, South or Central America, and associated islands and waters. Adjacent islands are understood to mean Bermuda and the islands located in the Caribbean Sea, except Cuba.

[2] See section 215(b) of the Immigration and Nationality Act (INA), 8 U.S.C. 1185(b).

[3] See 22 CFR 53.2(b), which waives the passport requirement pursuant to section 215(b) of the INA, 8 U.S.C. 1185(b).

[4] See 8 CFR 235.1(b).

U.S. citizens arriving at sea or land ports-of-entry from within the Western Hemisphere, other than Cuba, can currently present to CBP Officers a wide variety of documents to establish their right to enter the United States. A driver's license issued by a state motor vehicle administration or other competent state government authority is the most common form of identity document now provided to CBP at the border even though such documents do not denote citizenship. Documents currently used at these ports-of-entry also include birth certificates issued by a U.S. jurisdiction, Consular Reports of Birth Abroad, Certificates of Naturalization, and Certificates of Citizenship.

B. Current Document Requirements for Nonimmigrant Aliens Arriving by Sea or Land

Currently, each nonimmigrant alien arriving in the United States must present to the CBP Officer at the port-of-entry a valid passport issued by his or her country of citizenship and a valid visa issued by a U.S. embassy or consulate abroad, unless one or both requirements have been waived.[5] Nonimmigrant aliens applying for entry to the United States must also satisfy any other applicable entry requirements (e.g., U.S. Visitor and Immigrant Status Indicator Technology Program (US-VISIT)) and overcome all grounds of inadmissibility before being admitted to the United States. For nonimmigrant aliens arriving in the United States at sea or land ports-of-entry, the only current waiver to the passport requirement applies to (1) citizens of Canada and Bermuda arriving from within the Western Hemisphere, and (2) Mexican nationals with a Border Crossing Card (BCC) arriving from a contiguous territory.[6]

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[5] See section 212(a)(7)(B)(i) of the INA, 8 U.S.C. 1182(a)(7)(B)(i).

[6] Mexican nationals arriving in the United States who possess a Form DSP-150, B-1/B-2 Visa and Border Crossing Card (BCC) may be admitted without presenting a valid passport when coming from contiguous territory. See 8 CFR 212.1(c)(1).

1. Canadian Citizens and Citizens of the British Overseas Territory of Bermuda

In most cases, Canadian citizens and citizens of the British Overseas Territory of Bermuda (Bermuda) are not currently required to present a passport and visa[7] when entering the United States by sea or land as nonimmigrant visitors from countries in the Western Hemisphere. These travelers must nevertheless satisfy the inspecting CBP Officer of their identity, citizenship, and admissibility at the time of their application for admission. The applicant may present any proof of citizenship in his or her possession. An individual who initially fails to satisfy the inspecting CBP Officer that he or she is a Canadian or Bermudian citizen may then be required by CBP to provide further identification and proof of citizenship such as a birth certificate, passport, or citizenship card.

2. Mexican Nationals

Mexican nationals arriving in the United States are generally required to present a passport and visa when applying for entry to the United States. However, Mexican nationals who possess a Form DSP-150, B-1/B-2 Visa and Border Crossing Card (BCC) currently may be admitted at sea and land ports-of-entry without presenting a passport when arriving in the United States from contiguous territory.[8] A BCC is a machine-readable, biometric card, issued by the U.S. Department of State, Bureau of Consular Affairs.

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[7] See 8 CFR 212.1(a)(1)(Canadian citizens) and 8 CFR 212.1(a)(2)(Citizens of Bermuda). See also 22 CFR 41.2.

[8] See 8 CFR 212.1(c)(1)(i). See also 22 CFR 41.2(g). Mexican BCC holders traveling for less than 72 hours within a certain geographic area along the United States' border with Mexico: usually up to 25 miles from the border but within 75 miles under the exception for Tucson, Arizona, do not need to obtain a form I-94. If they travel outside of that geographic area and/or period of time, they must obtain an I-94 from CBP at the port-of-entry. 8 CFR 235.1(h)(1).

C. Statutory and Regulatory History

This NPRM is the second phase of a joint DHS and DOS plan, known as the Western Hemisphere Travel Initiative (WHTI), to implement section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended (hereinafter IRTPA).[9] A brief discussion of IRTPA and related regulatory efforts follows.

1. Intelligence Reform and Terrorism Prevention Act of 2004

Section 7209 of IRTPA requires that the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement a plan to require travelers entering the United States to present a passport, other document, or combination of documents, that are "deemed by the Secretary of Homeland Security to be sufficient to denote identity and citizenship." Section 7209 expressly provides that U.S. citizens and nationals for whom documentation requirements have previously been waived on the basis of reciprocity under section 212(d)(4)(B) of the INA (8 U.S.C 1182(d)(4)(B)) (i.e., citizens of Canada, Mexico, and Bermuda) will be required to comply.[10]

Section 7209 limits the President's authority[11] to waive generally applicable documentation requirements after the complete implementation of the plan required by

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[9] Pub. L. 108-458, as amended, 118 Stat. 3638 (Dec. 17, 2004).

[10] Section 7209 does not apply to Lawful Permanent Residents, who will continue to be able to enter the United States upon presentation of a valid Form I-551, Permanent Resident Card, or other valid evidence of permanent resident status. See section 211(b) of the INA, 8 U.S.C. 1181(b). It also does not apply to alien members of the United States Armed Forces traveling under official orders who present military identification. See section 284 of the INA, 8 U.S.C. 1354. Additionally, section 7209 does not apply to nonimmigrant aliens from anywhere other than Canada, Mexico, or Bermuda. See section 212(d)(4)(B) of the INA, 8 U.S.C 1182(d)(4)(B). Such nonimmigrant aliens are currently required to show a passport for admission into the United States.

[11] See section 212(d)(4)(B) of the INA, 8 U.S.C. 1182(d)(4)(B), and section 215(b) of the INA, 8 U.S.C. 1185(b) (delegated to the Secretaries of State and Homeland Security under Executive Order 13323, 69 FR 241 (Dec. 30, 2003)).

IRTPA. With respect to non-immigrant aliens currently granted a passport waiver under section 212(d)(4)(B) of the INA (i.e., nationals of contiguous territory or adjacent islands), the President may not waive the document requirement imposed by IRTPA. With respect to U.S. citizens, once WHTI is completely implemented, the President may waive the new documentation requirements for departing or entering the United States only in three specific circumstances: (1) when the Secretary of Homeland Security determines that "alternative documentation" that is the basis of the waiver is sufficient to denote identity and citizenship; (2) in an individual case of an unforeseen emergency; or (3) in an individual case based on "humanitarian or national interest reasons."[12]

Accordingly, U.S. citizens and those nonimmigrant aliens who currently are not required to present passports, pursuant to sections 215(b) and 212(d)(4)(B) of the INA respectively, will be required to present a passport or other acceptable document that establishes identity and citizenship deemed sufficient by the Secretary of Homeland Security when entering the United States from any location, including from countries within the Western Hemisphere. The principal groups affected by this provision of IRPTA are citizens of the United States, Canada, and Bermuda entering the United States from within the Western Hemisphere and Mexican nationals in possession of a BCC entering the United States from contiguous territory.[13]

2. Advance Notice of Proposed Rulemaking

On September 1, 2005, DHS and DOS published in the **Federal Register** an advance notice of proposed rulemaking (ANPRM), at 70 FR 52037, announcing a joint

[12] See section 7209(c)(2) of IRTPA.

[13] These groups of individuals are currently exempt from the general passport requirement when entering the United States. See 8 CFR 212.1(a)(1) (Canadian citizens), 8 CFR 212.1(c)(1)(i) (Mexican citizens), and 8 CFR 212.1(a)(2) (Bermudian citizens).

DHS and DOS plan to amend their respective regulations to implement section 7209 of IRTPA. The ANPRM announced that DHS and DOS anticipated implementing the documentation requirements of section 7209 in two stages. The first stage would have affected those travelers entering the United States by air and sea from within the Western Hemisphere and the second stage would have addressed travelers arriving by land. The two-stage approach was intended to ensure an orderly transition, provide affected persons with adequate notice to obtain necessary documents, and ensure that adequate resources were available to issue additional passports or other authorized documents.

In the ANPRM, DHS and DOS sought public comment to assist the Secretary of Homeland Security to make a final determination of which documents or combination of documents other than passports would be accepted at ports-of-entry to satisfy section 7209. DHS and DOS also solicited public comments regarding the economic impact of implementing section 7209, the costs anticipated to be incurred by U.S. citizens and others as a result of new document requirements, potential benefits of the rulemaking, alternative methods of complying with the legislation, and the proposed stages for implementation. In addition to receiving written comments, DHS and DOS representatives attended listening sessions and town hall meetings across the country and met with community leaders and stakeholders to discuss the initiative.

DHS and DOS received 2,062 written comments in response to the ANPRM. Comments were received from a wide range of U.S. and Canadian sources including: private citizens; businesses and associations; local, state, federal, and tribal governments; and members of the U.S. Congress and Canadian Parliament. The majority of the comments (1,910) addressed potential changes to the documentation requirements at land

border ports-of-entry. One hundred and fifty-two (152) comments addressed changes to the documentation requirements for persons arriving at air or sea ports-of-entry. The comments related to air travel were addressed separately in the air final rule, which is discussed below.[14] Complete responses to the comments from the ANPRM related to sea and land arrivals will be presented in the final WHTI sea and land rule.

3. Rules for Air Travel from within the Western Hemisphere

On August 11, 2006, DHS and DOS published an NPRM for air and sea arrivals. The NPRM proposed that, subject to certain narrow exceptions, beginning January 2007, all U.S. citizens and nonimmigrant aliens, including those from Canada, Bermuda, and Mexico, entering the United States by air and sea would be required to present a valid passport, NEXUS Air card, or Merchant Mariner Document (MMD). The NPRM provided that the requirements would not apply to members of the United States Armed Forces. For a detailed discussion of what was proposed for air and sea arrivals, please see the NPRM at 71 FR 41655.

Based on the DOS proposal to allow use of a passport card in the sea environment discussed below, Congressional intent with respect to land and sea travel also discussed below, and the public comments. DHS and DOS deferred until this rulemaking decision on the document requirements for arrivals by sea. Complete responses to the comments relating to sea travel that were submitted in response to the air and sea NPRM will be presented in the final sea and land rule.

The final rule for travelers entering or departing the United States at air ports-of-entry (Air Rule) was published in the **Federal Register** on November 24, 2006.

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[14] See 71 FR 68412 (Nov. 24, 2006).

Beginning January 23, 2007,[15] U.S. citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico entering and departing the United States at air ports-of-entry from within the Western Hemisphere are generally required to present a valid passport. The main exceptions to this requirement are for U.S. citizens who present a valid, unexpired Merchant Mariner Document traveling in conjunction with maritime business and U.S. and Canadian citizens who present a NEXUS Air card for use at a NEXUS Air kiosk.[16] The Air Rule made no changes to the requirements for members of the United States Armed Forces. Please see the Air Rule at 71 FR 68412 for a full discussion of the air requirements.

4. Amendment to Section 7209 of IRTPA

On October 4, 2006, the President signed into law the Department of Homeland Security Appropriations Act of 2007 (DHS Appropriations Act of 2007).[17] Section 546 of the DHS Appropriations Act of 2007 amended section 7209 of IRTPA by stressing the need for DHS and DOS to expeditiously implement the WHTI requirements no later than the earlier of two dates, June 1, 2009, or three months after the Secretaries of Homeland Security and State certify that certain criteria have been met. The section requires "expeditious[]" action and states that requirements must be satisfied by the "earlier" of the dates identified. By using this language, the drafters expressed an intention for rapid

[15] DHS and DOS determined that delaying the effective date of the Air Rule to January 23, 2007, was appropriate for air travel because of operational considerations and available resources. See id.

[16] Under the Air Rule, Lawful Permanent Residents of the United States continue to need to carry their I-551 cards, and permanent residents of Canada continue to be required to present a passport and a visa, if necessary, as they did before the rule came into effect.

[17] Pub. L. 109-295, 120 Stat. 1355 (Oct. 4, 2006).

action.[18] Congress also expressed an interest in having the requirements for sea and land implemented at the same time and having alternative procedures for groups of children traveling under adult supervision.[19]

5. Passport Card NPRM

On October 17, 2006, to meet the documentary requirements of WHTI and to facilitate the frequent travel of persons living in border communities, DOS, in consultation with DHS, proposed to develop a card-format passport for international travel by United States citizens through land and sea ports of entry between the United States, Canada, Mexico, or the Caribbean and Bermuda.[20]

The passport card would contain security features similar to the traditional passport book. The passport card would be particularly useful for citizens in border communities who regularly cross the border and would be considerably less expensive than a traditional passport. DOS anticipates the validity period for the passport card to be the same as for the traditional passport – ten years for adults and five years for minors under age 16. Please see the Passport Card NPRM at 71 FR 60298, for a full discussion of the background and details of the proposed passport card. DOS will issue a final rule prior to making passport cards available to the public.

6. Certifications to Congress

In Section 546 of the DHS Appropriations Act of 2007, Congress called for DHS and DOS to make certain certifications before completing the implementation of the WHTI plan. The Departments have been working toward making these certifications

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[18] Id. at 546. See Congressional Record, 109th cong. 2nd sess., September 29, 2006 at H7964.

[19] Id.

[20] 71 FR 60928.

since October 2006 and have made great progress in meeting them. The Departments are instructed to certify to:

1. NIST Certification. National Institute of Standards and Technology ("NIST") certification concerning security standards and best practices for protection of personal identification documents.

On May 1, 2007, NIST certified that the proposed card architecture of the passport card meets or exceeds the relevant standard and best practices, as specified in the statute.

2. Technology Sharing. Certify that passport card technology has been shared with Canada and Mexico.

DHS and DOS have been sharing information and meeting regularly with both Mexican and Canadian officials, including the decision to select RFID technology for the passport card.

3. Postal Service Fee Agreement. Certify that an agreement has been reached and reported to Congress on the fee collected by the U.S. Postal Service for acceptance agent services.

DOS is working with the Postal Service to memorialize their agreement including the proposed new fees to be set by DOS so that the appropriate certification can be made and the detailed justification submitted.

4. Groups of Children. Certify that an alternative procedure has been developed for border crossings by groups of children.

This NPRM contains an alternative procedure for groups of children traveling across an international border under adult supervision with parental consent.

5. Infrastructure. Certify that the necessary passport card infrastructure has been installed and employees have been trained.

DHS anticipates using existing equipment along with the deployment of new technology. CBP has technology currently in place at all ports-of-entry to read any travel document with a machine-readable zone, including passports and the new passport card. All CBP Officers at ports-of-entry are currently trained in the use of this technology. Depending upon the results of our environmental analysis, CBP will deploy an integrated RFID technical infrastructure to support advanced identity verification in incremental deployment phases. RFID technology training plans and requirements are currently being developed with initial training to be completed by November 2007.

6. Passport Card Issuance. Certify that the passport card is available to U.S. citizens.

DOS has developed an ambitious and aggressive schedule to develop the passport card and is making progress toward that goal. The Request for Procurement (RFP) to potential contractors was issued on May 25, 2007. DOS expects to begin testing product samples in the summer. In accordance with testing requirements established in the certification by NIST, DOS will conduct the full range of security, durability and privacy tests on the passport card and protective sleeve to ensure that a high-quality, secure card is issued to the American public. DOS is planning to issue a final rule in the near future.

7. Common Land and Sea Implementation. Certify to one implementation date.

This NPRM sets forth one implementation date for land and sea travel.

The Departments have worked very closely to update the appropriate congressional committees on the status of these certifications and will continue to do so until final certifications are made. DOS and DHS believe that these certifications will be made well in advance of the June 1, 2009 deadline for implementation.

DOS and DHS are planning to conduct a robust public outreach program to the traveling public, which will include a more targeted effort in border communities.

We anticipate that RFID infrastructure will be rolled out to cover the top 39 ports-of-entry (in terms of number of travelers) through which 95 percent of the land traffic enters the United States. The remaining land and all sea ports-of-entry would utilize existing machine-readable zone technology to read the travel documents. Machine-readable zone technology is currently in place in all air, sea, and land ports-of-entry.

III. SECURITY AND OPERATIONAL CONSIDERATIONS AT THE U.S. BORDER

WHTI will reduce vulnerabilities identified in the final report of the National Commission on Terrorist Attacks Upon the United States, also known as the 9/11 Commission. WHTI is intended not only to enhance security efforts at the borders, but is also intended to expedite the movement of legitimate travel within the Western Hemisphere.

The land border, in particular, presents complex operational challenges, in that a tremendous amount of traffic must be processed in a short amount of time. For example, there are often several passengers in a vehicle, and multiple vehicles arriving at one time at each land border port-of-entry. Many of the people encountered crossing at the land border ports-of-entry are repeat crossers, who travel back and forth across the border numerous times a day.

The historical absence of standard travel document requirements for the travel of Canadian and U.S. citizens across our northern and southern borders has resulted in the current situation, where a multiplicity of documents can be presented at ports-of-entry by Canadian and U.S. travelers. As a result, those individuals who seek to enter the United States or Canada illegally or who pose a potential threat could falsely declare themselves as U.S. or Canadian citizens. They can do this through several methods: presenting fraudulent documents that cannot be validated; presenting facially valid documentation that cannot be validated against the identity of the holder[21]; assuming the identity of the legitimate authentic document holder; or undocumented false claims. These same vulnerabilities exist for individuals purporting to be U.S. citizens crossing back and forth across the southern border with Mexico.

U.S. travel document requirements for Mexican nationals already addressed most of these vulnerabilities prior to the passage of the IRTPA. Generally, Mexican nationals are required to present either a Mexican passport with a visa or a biometric BCC[22] when entering the United States. Mexican nationals can also apply for membership in DHS Trusted Traveler Programs such as FAST and SENTRI.[23]

The current documents presented by U.S., Canadian, and Bermudian citizens arriving from within the Western Hemisphere vary widely in terms of the security and

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[21] This refers to individuals who obtain valid documents through malfeasance. In such cases, the individual uses fraudulently obtained source/feeder documents to impersonate the U.S. or Canadian citizen in order to obtain the new document (i.e., identity theft).

[22] Development of the biometric BCC was a joint effort of DOS and U.S. Citizenship and Immigration Services (USCIS) to comply with Section 104 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRIA) Pub. L. 104-208, Div. C. 110 Stat. 3009-546.

[23] Additionally, Mexican nationals who temporarily reside lawfully in Canada or the United States during the term of the NEXUS membership and pass an Interpol criminal history check may also be eligible to participate in NEXUS.

reliability as evidence of identity, status, and nationality. This variety poses challenges for accurate identity and admissibility determinations by border officials and has been identified as a security vulnerability for cross-border travel between these countries. It is recognized that national passports of Canada, Mexico, Bermuda (whether Bermudian or British passports) and the United States do currently, and will continue to, provide reliable evidence of identity and nationality for the purposes of cross-border travel.

Standardizing documentation requirements for travelers entering the United States in the land border environment would enhance our national security and secure and facilitate the entry process into the United States. Limiting the number of acceptable, secure documents would allow border security officials to quickly, efficiently, accurately, and reliably review documentation, identify persons of concern to national security, and determine eligibility for entry of legitimate travelers without disrupting the critically important movement of people and goods across our land borders. Standardizing travel documents for citizens of the United States, Canada, Bermuda, and Mexico entering the United States in the land border environment would also reduce confusion for the travel industry and make the entry process more efficient for CBP officers and the public alike.

Originally, DHS and DOS proposed to implement new documentation requirements for those travelers by air and most sea travel in the first phase of the WHTI plan. However, for the reasons described above, the Departments decided to delay new requirements for sea travel until the passport card would be available for use in the sea environment. The Departments also believed it would be less confusing to the public if sea and land requirements, both of which would accept the passport card, were

implemented at the same time. Thus, documentation requirements for sea travelers were deferred to this rulemaking.[24]

IV. PROPOSED WHTI DOCUMENT REQUIREMENTS FOR U.S. CITIZENS AND NONIMMIGRANT ALIENS

This NPRM proposes new documentation requirements for U.S. citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico entering the United States by land from Canada and Mexico, or by sea[25] from within the Western Hemisphere. A discussion of the proposed requirements for most U.S. citizens, Canadians, Bermudians, and Mexican nationals follows in Section IV. In Section V., we explain the special circumstances under which specific groups or persons may present other documents for entry into the United States by sea or land, such as U.S. and Canadian citizen children and U.S. citizens traveling on cruise ships.

A. U.S. Citizens Arriving by Sea or Land

Under this proposed rule, most U.S. citizens entering the United States at all sea or land ports-of-entry would be required to have either (1) a U.S. passport; (2) a U.S. passport card; (3) a trusted traveler card (NEXUS, FAST, or SENTRI);[26] (4) a valid MMD when traveling in conjunction with official maritime business; or (5) a valid U.S. Military identification card when traveling on official orders or permit.

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[24] Please see the Air Rule for a full discussion of the reasons that the sea regulations were deferred, at 71 FR 68412.

[25] In some circumstances under this rule, it is important to distinguish between types of sea travel. Those circumstances are so noted in the discussion of the proposed requirements.

[26] Currently, U.S. citizens can show a NEXUS, SENTRI, or FAST card for entry into the United States only at dedicated lanes at designated land border ports-of-entry.

1. Passport Book

U.S. passports are internationally recognized, secure documents that demonstrate the individual's identity and citizenship and continue to be specifically authorized for all border-crossing purposes. Traditional U.S. passport books contain security features including digitized photographs, embossed seals, watermarks, ultraviolet and fluorescent light verification features, security laminations, micro-printing, holograms, and pages for visas and stamps.

U.S. electronic passports or e-passports, which DOS has issued to the public since August 2006, are the same as traditional passports with the addition of a small contactless integrated circuit (computer chip) embedded in the back cover. The chip securely stores the same data visually displayed on the photo page of the passport, and will additionally include a digital photograph. The inclusion of the digital photograph will enable biometric comparison, through the use of facial recognition technology at international borders. The U.S. "e-passport" incorporates additional anti-fraud and security features.[27]

2. Passport Card

DOS published an NPRM announcing the development and issuance of a card-format passport on October 17, 2006 (71 FR 60928), which would be a secure citizenship and identity document that carries most of the rights and privileges of a traditional U.S. passport, but with validity limited to international travel by land and sea between the United States and Canada, Mexico, the Caribbean or Bermuda.

The passport card would contain security features similar to the passport book, would be issued by DOS, would contain biographical information about the holder, and

[27] More information about e-passports is available at www.state.gov. See also, 70 FR 61553 (Oct. 25, 2005)(final rule for e-passports).

would be readily authenticated and validated at the border. The passport card will contain a radio frequency identification (RFID) chip, which will link the card, via a manufacturer-generated reference number, to a stored record in secure government databases. Unlike the e-passport, which contains personal data on the RFID chip, there will be no personal information stored on the passport card's RFID chip. The passport card would be particularly useful for citizens in border communities who cross the land border every day. The passport card would satisfy the definition of a passport, and, therefore, it would be specifically authorized in section 7209 of IRTPA.

3. Trusted Traveler Program Documents

Under the proposed rule, U.S. citizens would be permitted to present cards issued for certain DHS Trusted Traveler Programs, such as NEXUS, Free and Secure Trade (FAST), and Secure Electronic Network for Travelers Rapid Inspection (SENTRI), at all lanes at all land and sea ports-of-entry when traveling from contiguous territory or adjacent islands.

These trusted traveler cards contain numerous security features, are issued by either U.S. or Canadian border security agencies, contain biographical information about the holder, and are readily authenticated and validated at the border. These programs are implemented in partnership with the Governments of Canada and Mexico, and many citizens of these countries participate in the programs.

Under the proposed rule, U.S. citizens who arrive by pleasure vessel[28] from contiguous territory would be permitted to show the trusted traveler cards, among other documents, at all ports of entry. Additionally, U.S. citizens who have been pre-screened

[28] For purposes of this rule, a pleasure vessel is a vessel that is used exclusively for recreational or personal purposes and not to transport passengers or property for hire.

as part of the NEXUS or Canadian Border Boat Landing Program who arrive by pleasure vessel from Canada would be permitted to report their arrival by telephone or by remote video inspection, respectively.

U.S. citizens who arrive by pleasure vessel from Canada would be permitted to show the NEXUS card in lieu of a passport or passport card along the northern border under the auspices of the remote inspection system for pleasure vessels, such as the Outlying Area Reporting System (OARS). Currently, as NEXUS members, U.S. citizen recreational boaters can report their arrival to CBP by telephone. Otherwise, these pleasure vessel travelers would be required to report in person to a port-of-entry in order to enter the United States.[29]

a. NEXUS Program

The NEXUS program is implemented by CBP and the Canadian Border Services Agency (CBSA), pursuant to the Shared Border Accord and Smart Border Declaration between the United States and Canada.[30] NEXUS streamlines border inspection for pre-screened, low-risk travelers by utilizing one application form, a joint enrollment process,

[29] See 8 CFR 235.1(g). U.S. citizen holders of a Canadian Border Boat Landing Permit (Form I-68) would be required to possess a passport, passport card, or other document specified in this NPRM when arriving in the United States in combination with the Form I-68 and would be required to show this documentation when applying for or renewing the Form I-68. Participants would continue to benefit from entering the United States from time to time without having to wait for a physical inspection, subject to the applicable regulations. More information on the Canadian Border Boat Landing Program (I-68 Permit Program) is available on the CBP website at www.cbp.gov.

[30] On December 14, 2006, CBP announced that the NEXUS air, highway, and marine modes had been integrated into one program. This integration means that there will be one application form and fee to participate in all three modes of the NEXUS program. CBP also announced that NEXUS would expand the number of processing locations at Canadian airports in 2007. More information on the NEXUS program is available on the CBP website at www.cbp.gov.

bi-national security screening, and one card for expedited entry to both Canada and the United States for air, land and sea travel.[31]

Applicants for NEXUS complete a joint U.S./Canada NEXUS Application. The application is then reviewed by both CBP and the CBSA. Once approved by both countries, the applicant reports to a joint CBP/CBSA enrollment center where the applicant is interviewed and fingerprinted by CBP and CBSA. Applicants who are deemed low-risk and are approved for the program are then issued a NEXUS Identification Card.

b. FAST Program

The Free and Secure Trade (FAST) program is designed to enhance the security and safety along both the northern and southern land borders of the United States, while also enhancing the economic prosperity of the United States, Canada, and Mexico, by coordinating, to the maximum extent possible, their customs commercial programs. The program accomplishes this by allowing member commercial drivers to cross the border with expedited customs and immigration processing and to transport eligible goods for FAST approved carriers along the northern and southern borders.

Commercial drivers applying for the FAST program on the northern border complete a U.S./Canada FAST Commercial Driver Application and send it to the FAST Application Processing Center in Canada. The application is then reviewed by both CBP and CBSA. Once approved by both countries, the applicant reports to a joint CBP/CBSA enrollment center where he or she is interviewed by CBP and CBSA.

During the application process, a U.S. applicant's ten fingerprints are taken and submitted to the FBI for a records check;[32] identification and immigration documents are

[31] Lawful Permanent Residents of the United States would continue to be required to carry I-551 Permanent Resident cards while they are traveling under the NEXUS program.

checked for validity; and a digital photograph is taken. Applicants who are deemed low-risk and are approved for the program are then issued a FAST Commercial Driver Identification Card (FAST Card). Drivers applying for the FAST program on the southern border enroll in a similar process where the card applications are reviewed and cards are issued by CBP.

c. SENTRI Program

SENTRI currently streamlines border inspection for pre-approved low-risk travelers for expedited entry into the United States for land travel along the southern border, similar to NEXUS and FAST.[33] To enroll in SENTRI a participant must provide acceptable proof of citizenship or permanent resident status in the United States. U.S. citizens and Lawful Permanent Residents must provide an original birth certificate with government-issued photo identification, a valid passport, or a certificate of naturalization.

4. Merchant Mariner Document (MMD)

Currently, a Merchant Mariner Document (MMD) is accepted for U.S. citizen Merchant Mariners in lieu of a passport.[34] U.S. citizen Merchant Mariners must provide proof of their U.S. citizenship and undergo an application process that includes a fingerprint background check submitted to the FBI, a National Driver Register check, and a drug test from an authorized official that administers a drug testing program in order to obtain an MMD.

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[32] For Canadian applicants, fingerprints are submitted to Canadian authorities for a records check.

[33] Enrollment in the program is available to Mexican nationals, United States citizens or lawful permanent residents, and a national of any other country who demonstrates a need to use the program.

[34] See 22 CFR 53.2 (c).

The Air Rule provides that an MMD used by U.S. citizens in conjunction with maritime business is sufficient to denote identity and citizenship when presented upon arrival at an air port-of-entry.

Under this proposed rule, DHS and DOS propose that U.S. citizen Merchant Mariners may present a valid MMD when arriving in the United States at sea or land ports-of-entry when traveling in conjunction with official maritime business. It should be noted that the U.S. Coast Guard has proposed to phase-out the MMD over the next five years and streamline all existing Merchant Mariner credentials.[35] DHS and DOS propose to accept the MMD as long as it is an unexpired document.[36]

United States citizen Merchant Mariners serving on U.S. flag vessels are eligible for no-fee U.S. passports upon presentation of a letter from the employer and an MMD, in addition to the standard evidence of citizenship and identity.

5. U.S. Military Identification Card

Citizens of the United States currently are not required to possess a valid passport to enter or depart the United States when traveling as a member of the Armed Forces of the United States on active duty under 22 CFR 53.2(d). Because the military identification card is issued to U.S. citizens of the Armed Forces and because U.S. citizen members of the U.S. military traveling under military orders are, without exception, entitled to be admitted to the United States, the Secretary of Homeland Security proposes to determine that a military identification card when traveling under official orders or

[35] See 71 FR 29462 (May 22, 2006) and 72 FR 3605 (Jan. 25, 2007).

[36] On April 24, 2007, the U.S. Coast Guard published an interim final rule amending Coast Guard regulations to allow for the issuance of MMDs to certain non-resident aliens for service in the stewards departments of U.S.-flag large passenger vessels endorsed for coastwise trade. See 72 FR 20278. However, only U.S. citizens may use the MMD in lieu of a passport under this proposed rule.

permit of the U.S. Armed Forces would be an acceptable form of alternative documentation when presented upon arrival at air, sea, and land ports-of-entry.

Allowing members of the U.S. Armed Forces to cross the U.S. borders without the need to present a passport is necessary to meet the operational requirements of the Armed Forces. In fact, pursuant to Section 284 of the INA,[37] alien members of the U.S. Armed Forces entering under official orders and presenting military identification specifically are not required to present a passport and visa.[38] Imposing a passport requirement on U.S. citizens who are members of the U.S. Armed Forces when there is no such requirement for alien members, would not be a desired result of the WHTI rulemaking.

Travel document requirements for spouses and dependents of U.S. citizen members of the U.S. Armed Forces, as well as Department of Defense contractors and civilian employees, will be subject to the same document requirements applicable to other arrivals at sea and land ports-of-entry otherwise specified in this NPRM.

B. Canadian Citizens and Citizens of Bermuda Arriving by Sea or Land

1. Canadians

Canadian citizens entering the United States at sea and land ports-of-entry would be required to present, in addition to any applicable visa requirements:[39]

1. a passport issued by the Government of Canada;[40]

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[37] See 8 U.S.C. 1354.

[38] See 8 CFR 235.1(c).

[39] See 8 CFR 212.1(h), (l), and (m) and 22 CFR 41.2(k) and (m).

[40] Foreign passports remain an acceptable border crossing document under section 7209 of the IRTPA.

2. a valid trusted traveler program card issued by CBSA or DHS as discussed above in Section III.C.1.c, e.g. FAST, NEXUS, or SENTRI[41]; or
3. alternative Canadian citizenship and identity documents hereafter proposed by Canada and accepted by DHS and DOS.

Additionally, Canadian citizens in the NEXUS program who arrive by pleasure vessel from Canada would be permitted to present a NEXUS membership card in lieu of a passport along the northern border under the auspices of the remote inspection system for pleasure vessels, such as the Outlying Area Reporting System (OARS).[42] Currently, as NEXUS members, Canadian recreational boaters can report their arrival to CBP by telephone.[43] Otherwise, these pleasure vessel travelers would be required to report in person to a port-of-entry in order to enter the United States.[44]

Both DHS and DOS have engaged with the Government of Canada and various provinces in discussions of alternative documents that could be considered for border crossing use at land and sea ports of entry under this rule. For instance, one Canadian office, Indians and Northern Affairs Canada, is in the process of issuing a card to

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[41] Canadian citizens who demonstrate a need may enroll in the SENTRI program and currently may use the SENTRI card in lieu of a passport. To enroll in SENTRI, a Canadian participant must present a valid passport and a valid visa, if required, when applying for SENTRI membership. Other foreign participants in the SENTRI program must present a valid passport and a valid visa, if required, when seeking admission to the United States, in addition to the SENTRI card. This proposed rule does not alter the passport and visa requirements for other foreign enrollees in SENTRI (i.e., other than Canadian foreign enrollees). Currently, Canadian citizens can show a SENTRI, NEXUS, or FAST card for entry into the United States only at designated lanes at designated land border ports-of-entry.

[42] Permanent residents of Canada must also carry a valid passport and valid visa, if required.

[43] Remote pleasure vessel inspection locations are only located on the northern border.

[44] See 8 CFR 235.1(g). Canadian holders of a Canadian Border Boat Landing Permit (Form I-68) would be required to possess a passport, passport card, or other document specified in this NPRM when arriving in the United States in combination with the Form I-68 and would be required to show this documentation when applying for or renewing the Form I-68.

registered Indians. This alternative document and any other alternative identity and citizenship document issued by the Government of Canada will be considered, as appropriate, in the course of this rulemaking. While we are not in a position to propose a complete list of alternative Canadian documents we will continue to engage in discussions of alternatives and welcome comments suggesting alternative Canadian documents.

In fact, various Canadian provinces have indicated their interest or intention in pursuing pilots of enhanced driver's licenses similar to the Washington State and DHS pilot (described below). Because documents accepted for border crossing under WHTI must denote citizenship, the participation of the Government of Canada in determinations of citizenship on behalf of its citizens, and recognition of this determination, is a strong consideration by the United States in the acceptance of documents by Canadian citizens. Therefore, at this time, DHS and DOS are not proposing to accept documents from Canadian citizens other than those described above. We will, however, consider other documents, as described above and in Section IV.D., as appropriate.

2. Bermudians

Under this proposed rule, all Bermudian citizens would be required to present a passport issued by the Government of Bermuda or the United Kingdom when seeking admission to the United States at all sea or land ports-of-entry, including travel from within the Western Hemisphere.

C. Mexican Nationals Arriving by Sea or Land

Under this proposed rule, all Mexican nationals would be required to present either (1) a passport issued by the Government of Mexico and a visa when seeking

admission to the United States, or (2) a valid Form DSP-150, B-1/B-2 laser visa Border Crossing Card (BCC) when seeking admission to the United States at land ports-of-entry or arriving by pleasure vessel or by ferry from Mexico.

For purposes of this rule, a pleasure vessel is defined as a vessel that is used exclusively for recreational or personal purposes and not to transport passengers or property for hire. A ferry is defined as any vessel: (1) operating on a pre-determined fixed schedule; (2) providing transportation only between places that are no more than 300 miles apart; and (3) transporting passengers, vehicles, and/or railroad cars. We note that ferries are subject to land border-type entry processing on arrival from, or departure to, a foreign port or place. Arrivals aboard all vessels other than ferries and pleasure vessels would be treated as sea arrivals.[45]

1. Border Crossing Card (BCC)

DOS issues BCCs to Mexican nationals who come to the United States on a regular basis. Since 1998, every new BCC contains a biometric identifier, such as a fingerprint, and a machine-readable zone (MRZ). In order to obtain a new BCC, a Mexican traveler must have a passport. Because the BCC is a B-1/B-2 visa, the State Department issuance process is nearly identical to that of other visas, with the attendant background checks and interviews necessary for security purposes.

Mexican nationals who hold a BCC will be allowed to use their BCC for entry at the land border and when arriving by ferry or pleasure vessel in lieu of a passport for

[45] For example, commercial vessels would be treated as arrivals at sea ports-of-entry. A commercial vessel is any civilian vessel being used to transport persons or property for compensation or hire to or from any port or place. A charter vessel that is leased or contracted to transport persons or property for compensation or hire to or from any port or place would be considered an arrival by sea under this rule. Arrivals by travelers on fishing vessels, research or seismic vessels, other service-type vessels (such as salvage, cable layers, etc.), or humanitarian service vessels (such as rescue vessels or hospital ships) would all be considered as arrivals by sea.

travel within 25 miles of the border with Mexico (75 miles for the Tucson, Arizona region) and no longer than a 30-day stay in the United States. For travel outside of these geographical limits or a stay over 30 days, under the proposed rule, Mexican nationals possessing a BCC would also be required to obtain a Form I-94 from CBP at the POE, as is currently the practice.[46] The BCC would not be permitted in lieu of a passport for commercial or other sea arrivals in the United States.

2. Trusted Traveler Program Use

We propose continuing the current practice that Mexican nationals may not use the FAST or SENTRI card in lieu of a passport or BCC. These participants, however, would continue to benefit from expedited border processing.

Mexican nationals applying for the FAST program on the southern border and applying for the SENTRI program must present a valid passport and valid visa or valid laser visa/BCC when applying to CBP for membership. CBP then reviews the applications and issues the cards.

3. Elimination of Passport Waiver to Obtain Documents at Mexican Consulate in United States

Mexican nationals who enter the United States from Mexico solely to apply for a Mexican passport or other "official Mexican document" at a Mexican consulate in the United States located directly adjacent to a land port-of-entry currently are not required to present a valid passport. This type of entry generally occurs at land borders.[47] There is

[46] See 8 CFR 212.1(c)(1)(i); also 22 CFR 41.2 (g). If Mexicans are only traveling within a certain geographic area along the United States' border with Mexico: usually up to 25 miles from the border but within 75 miles under the exception for Tucson, Arizona, they do not need to obtain a form I-94. If they travel outside of that geographic area, they must obtain an I-94 from CBP at the port-of-entry. 8 CFR 235.1(h)(1).

[47] See 8 CFR 212.1(c)(1)(ii).

no basis under section 7209, as amended, to exempt Mexican nationals coming to the United States to apply for a passport from the general requirements of WHTI. This proposed rule would eliminate this exception to the passport requirement for Mexican nationals. Under the proposed rule, all Mexican nationals will be required to have a passport with a visa or a BCC to enter the United States.

D. Other Approved Documents

DHS and DOS remain committed to considering travel documents developed by the various U.S. states and the Governments of Canada and Mexico in the future that would denote identity and citizenship and would also satisfy section 7209 of IRTPA.

Under this proposed rule, DHS proposes to consider as appropriate, documents such as state driver's licenses that satisfy the WHTI requirements by denoting identity and citizenship. These documents could be from a state, tribe, band, province, territory, or foreign government if developed in accordance with pilot program agreements between those entities and DHS. In addition to denoting identity and citizenship, these documents will have compatible technology, security criteria, and respond to CBP's operational concerns.

These documents would be announced and updated by publishing a notice in the **Federal Register**. A list of such programs and documents would also be maintained on the CBP website. It is anticipated that the Secretary of Homeland Security would designate successful pilot program documents that satisfy section 7209 and the technology, security, and operational concerns discussed above as documents acceptable for travel under section 7209. At the completion of a successful pilot, the Department would designate a document by rulemaking.

For example, the state of Washington (Washington) has begun a voluntary program to develop an "enhanced driver's license" and identification card that would denote identity and citizenship. On March 23, 2007, the Secretary of Homeland Security and the Governor of Washington signed a Memorandum of Agreement to develop, issue, test and evaluate an enhanced driver's license and identification card with facilitative technology to be used for border crossing purposes.[48]

On March 9, 2007, DHS published in the **Federal Register** an NPRM concerning minimum standards for state-issued driver's licenses and identification cards that can be accepted for official purposes in accordance with the REAL ID Act.[49] DHS encourages states interested in developing driver's licenses that will meet both the REAL ID and WHTI requirements to work closely with DHS to that end.

E. Timing of Changes and Effective Date for Final Rule

1. Satisfactory Evidence of Citizenship

Reducing the well-known vulnerability posed by those who might illegally purport to be U.S. or foreign citizens trying to enter the U.S. by land or sea on a mere oral declaration is imperative. As we move towards WHTI implementation, it is the intention of DHS to end the routine practice of accepting oral declarations alone starting January 31, 2008. CBP will retain its discretionary authority to request additional documentation when warranted and to make individual exceptions in extraordinary circumstances when oral declarations alone or with other alternative documents may be accepted. Beginning January 31, 2008, DHS will expect the satisfactory evidence of U.S. or Canadian citizenship to include either of the following documents or groups of documents: 1) a

[48] For more information on this pilot program, see www.dhs.gov.

[49] See REAL ID NPRM at 72 FR 10819.

document specified in this NPRM as WHTI-compliant for that individual's entry: or 2) a government-issued photo identification document presented with a birth certificate.[50] CBP will also act according to the procedures for children outlined in Sections V.B.1. and V.B.2 beginning January 31, 2008.

2. Implementation and Effective Date of Final Rule

At a date to be determined by the Secretary of Homeland Security, in consultation with the Secretary of State, the Departments will implement the full requirements of the land and sea phase of WHTI. The implementation date will be determined based on a number of factors, including the progress of actions undertaken by the Department of Homeland Security to implement the WHTI requirements and the availability of WHTI compliant documents on both sides of the border.

DHS and DOS expect the date of full WHTI implementation to be in the summer of 2008. The precise implementation date will be published in the Final Rule or will separately be published, with at least 60 days notice, in the **Federal Register**.

V. SPECIAL RULES FOR SPECIFIC GROUPS OF TRAVELERS PERMITTED TO USE OTHER ALTERNATIVE DOCUMENTS

Even though DHS and DOS have presented generally applicable document requirements above, in reviewing the security and travel considerations for the sea and land environments, the Departments believe there are certain special circumstances for specific groups of travelers that warrant permitting use of other documents. For these specific groups of travelers, within these limited circumstances, the Secretary of Homeland Security proposes that the delineated documents be accepted for travel as discussed.

[50] For U.S. citizens, a government-issued photo identification combined with a Consular Report of Birth Abroad or a Certificate of Naturalization could also be presented.

There are other groups of travelers that fall outside the scope of section 7209 and are therefore not subject to these requirements. The documents permitted for these populations under the foregoing special circumstances are also explained below.

A. U.S. Citizen Cruise Ship Passengers

Because of the nature of round trip cruise ship travel, DHS has determined that when U.S. citizens depart from and reenter the United States on board the same cruise ship, they pose a low security risk in contrast to cruise ship passengers who embark in foreign ports.

Although round trip cruises may stop in foreign ports (e.g., some east coast cruises stop in the Caribbean and some cruises in the Pacific Northwest may include land excursions in Canada), there are reasons why U.S. citizens aboard these cruises pose a low security risk. First, on round trip cruises, passengers who depart from the United States would have their documents checked both when they depart from the United States and when they return to the United States. Under current Advanced Passenger Information System (APIS) requirements,[51] the cruise lines are required to check the accuracy of the travel documents for all departing passengers. The passenger information is transmitted to CBP well before the return of the cruise ship.

While on the voyage, the cruise lines also check the identity of passengers as they return to the ship at various ports of call along the voyage. CBP has worked with the cruise lines to establish proper security protocols for these voyages and will continue to work with the cruise lines on security protocols in the future.

When the cruise ships return to the United States, CBP officers examine the documents of the incoming passengers as they would for other cruise passengers.

[51] See 19 CFR 4.7b (vessel arrivals) and 19 CFR 4.64 (vessel departures).

Because of the advanced passenger information supplied to CBP upon departure and because of CBP's ability to check this passenger data against the information supplied by passengers upon return to the United States, the security risks associated with allowing U.S. citizens to use the documents described below are low.

Accordingly, and in response to public comments, DHS and DOS propose the following alternative document requirement for U.S. cruise ship passengers. For purposes of the proposed rule, a cruise ship is defined as a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories.[52]

U.S. cruise ship passengers traveling within the Western Hemisphere would be permitted to present a government issued photo identification document in combination with either (1) an original or a certified copy of a birth certificate, (2) a Consular Report of Birth Abroad issued by DOS, or (3) a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services (USCIS), when returning to the United States, under certain conditions:

- The passengers must board the cruise ship at a port or place within the United States; and
- The passengers must return on the same ship to the same U.S. port or place from where they originally departed.

All passengers arriving on a cruise ship that originated at a foreign port or place would have to present travel documents that comply with applicable document

[52] For this proposed rule, DHS proposes to adopt the definition of a cruise ship used by the U.S. Coast Guard. See 33 CFR 101.105.

requirements otherwise specified in this NPRM when arriving in the United States. For voyages where the cruise ship originated in the United States, if any new passengers board the ship at a foreign port or place, the new passengers would have to present travel documents that comply with applicable document requirements otherwise specified in this NPRM when arriving in the United States. U.S. citizen cruise ship passengers that would fall under this alternative document requirement are reminded to carry appropriate travel documentation to enter any foreign countries or stops on the cruise.

B. U.S. and Canadian Citizen Children

The U.S. government currently requires all children arriving from countries outside the Western Hemisphere to present a passport when entering the United States. Currently, children (like adults) from the United States, Canada, and Bermuda are not required to present a passport when entering the United States from contiguous territory or adjacent islands by sea or land, excluding Cuba. Mexican children are currently required to present either a passport and visa or BCC upon arrival in the United States, as discussed above.

DHS and DOS considered extending this passport requirement to all U.S. and Canadian children entering the United States by sea or land from within the Western Hemisphere as well; however, many public comments have expressed a desire for an exception to be made for these children traveling across international borders, primarily in the land environment.

Because DHS and DOS believe that these children traveling in the sea and land environments pose a low security risk, DHS, in consultation with DOS, proposes the procedures below.

Mexican children are currently required to present either a passport and visa or BCC upon arrival in the United States, as discussed above. DHS and DOS do not propose to change the current document requirements for Mexican children entering the United States because Mexican children must now present either a passport and visa or BCC upon arrival in the United States from contiguous territory. As discussed above, IRTPA directs DHS to implement a plan to require documents for citizens for whom the general passport requirements have previously been waived, not to eliminate document requirements currently in place.

1. Children Under Age 16

Under the proposed rule, all U.S. citizen children under the age of 16 would be permitted to present either (1) an original or a certified copy of a birth certificate; (2) a Consular Report of Birth Abroad issued by DOS; or (3) a Certificate of Naturalization issued by USCIS at all sea and land ports-of-entry when arriving from contiguous territory. Canadian citizen children under the age of 16 would be permitted to present an original or a certified copy of a birth certificate at all sea and land ports-of-entry when arriving from contiguous territory.

DHS and DOS have determined that 16 is the most appropriate age to begin the requirement to present a passport, passport card (for U.S. citizens), or other approved document because at that age most states begin issuing photo identification to children, such as a driver's license, and at that point, the child would consequently, have a known and established identity that could be readily accessed by border security and law enforcement personnel. CBP officers at the border could more easily determine if the traveler was wanted for a federal crime, or if the person had been listed as missing in a

federal database. Also, age 16 is the age that DOS begins to issue adult passports, valid for 10 years instead of 5 years for children. DHS and DOS also recognize that it is difficult for the majority of children under 16 to obtain a form of government-issued photo identification other than a passport or passport card. U.S. and Canadian children age 16 and over who arrive from contiguous territory would be subject to the WHTI document requirements specified below or otherwise specified in this NPRM.

In order to facilitate law enforcement functions. DHS and DOS recommend that those attempting to enter the United States with children under the age of 16 have verbal or written evidence of parental consent for the child to travel internationally. For example, both parents or legal guardians. or one parent or guardian with sole custody, may provide written consent for a child's international travel with an adult who is not that child's parent or guardian.

2. Groups of Children Under Age 19

In Section 546 of the DHS Appropriations Act of 2007, Congress expressed an interest that an alternative procedure be developed for groups of children traveling across an international border under adult supervision with parental consent.

Under this proposed rule, U.S. and Canadian citizen children under age 19, who are traveling with public or private school groups. religious groups, social or cultural organizations, or teams associated with youth sport organizations that arrive at U.S. sea or land ports-of-entry from contiguous territory. would be permitted to present either (1) an original or a certified copy of a birth certificate; (2) a Consular Report of Birth Abroad issued by DOS; or (3) a Certificate of Naturalization issued by USCIS, when the groups are under the supervision of an adult affiliated with the organization (including a parent

of one of the accompanied children who is only affiliated with the organization for purposes of a particular trip) and when all the children have parental or legal guardian consent to travel. For purposes of this alternative procedure, an adult would be considered to be a person age 19 or older, and a group would consist of two or more people.

The group, organization, or team would be required to contact CBP upon crossing the border at the port-of-entry where it will cross and provide on organizational letterhead: (1) the name of the group, organization or team and the name of the supervising adult; (2) a list of the children on the trip; (3) for each child, the primary address, primary phone number, date of birth, place of birth, and name of at least one parent or legal guardian; and (4) the signature of the supervising adult certifying that he or she has obtained parental or legal guardian consent for each participating child. The group, organization, or team would be able to demonstrate parental or legal guardian consent by having the adult leading the group sign and certify in writing that he or she has obtained parental or legal guardian consent for each participating child.

For Canadian children, in addition to the information indicated above, a trip itinerary, including the stated purpose of the trip, the location of the destination, and the length of stay would be required.

As it is structured, we believe most of the groups utilizing this alternative procedure would be high school groups or groups containing children aged 16 to 18. Based on experience, there is little, if any, risk of child trafficking or parental abduction in the group travel context. To avoid delays upon arrival at a port-of-entry, CBP would recommend that the group, organization, or team provide this information well in

advance of arrival, and would recommend that each participant traveling on an original or certified copy of a birth certificate, Consular Report of Birth Abroad, or Certificate of Naturalization carry a government or school issued photo identification document, if available. Travelers with the group who are age 19 and over would be subject to the generally applicable travel document requirements specified in 8 CFR parts 211, 212 or 235 and 22 CFR parts 41 or 53.

3. Alternative Approach for Children; Parental Consent

DOS and DHS also seek comments regarding approaches to ensuring proper documentation to address concerns about child abduction, parental kidnapping, and trafficking in children across U.S. borders.

DOS's Office to Monitor and Combat Trafficking in Persons estimates that approximately half the victims of trafficking who enter the United States are minors. At any one time, there are approximately 700 open cases of parental child abduction across the United States borders with Canada and Mexico.

In light of concerns about the safety of children, the American public supported changes in passport processing beginning in 1999 to require evidence of parental consent. Currently, DOS requires the execution of a passport application by both parents or legal guardian(s) before the passport agent or passport acceptance agent as a precondition to the issuance of a passport to a child under 14. On March 7, 2007, DOS published for public comment a rule proposing to require the execution of a passport application by both parents or legal guardian(s) for a passport application pertaining to a minor under the age of 16.[53] Furthermore, parents are making use of the DOS Children's Passport

[53] See 72 FR 10095.

Issuance Alert System. Under this system, DOS notifies a parent or court ordered legal guardian, when requested, before issuing a U.S. passport for his or her child.

DOS and DHS are soliciting comments on whether a traditional passport or a passport card should be required for any child under 16 entering the United States not in a group without his/her parents. DOS and DHS are also soliciting comments on what would be the advantages and disadvantages to requiring a traditional passport or a passport card, and not allowing child travelers in such circumstances to rely upon a birth certificate, Consular Record of Birth Abroad, or Certificate of Naturalization.

C. Lawful Permanent Residents of the United States

Section 7209 of IRTPA does not apply to Lawful Permanent Residents (LPRs), because LPRs are immigrant aliens exempted from the requirement to present a passport under section 211(b) of the INA. LPRs will continue to be able to enter the United States upon presentation of a valid Form I-551, Permanent Resident Card[54] or other evidence of permanent resident status.[55]

We note that DHS published a notice of proposed rulemaking in the **Federal Register** on July 27, 2006, that proposes to collect and verify the identity of LPRs arriving at air and sea ports-of-entry, or requiring secondary inspection at land ports-of-entry, through US-VISIT.[56] CBP Trusted Traveler program members (FAST, SENTRI or NEXUS) who are LPRs must always carry their Form I-551 cards in addition to their membership card.

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[54] See Section 211(b) of the INA, 8 U.S.C. 1181(b).

[55] See 8 CFR 211.1

[56] See 71 FR 42605.

D. Alien Members of the U.S. Armed Forces

Pursuant to Section 284 of the INA,[57] alien members of the U.S. Armed Forces entering under official orders presenting military identification are not required to present a passport and visa.[58] Because this statutory exemption does not fall within the scope of section 7209 of IRTPA, under this proposed rule, alien members of the U.S. Armed Forces traveling under orders would continue to be exempt from the requirement to present a passport when arriving in the United States at sea and land ports-of-entry. Accordingly, under this NPRM, alien members of the U.S. Armed Forces traveling under official orders or permit of the Armed Forces would be permitted to present those orders and a military identification card in lieu of a passport when entering the United States at air, sea, and land ports-of-entry. However, spouses and dependents of military members are not covered by the exemption set forth in section 284 of the INA.[59] Under this proposed rule, spouses and dependents of these alien military members, unless they are LPRs, will be subject to the same document requirements as other sea and land border arrivals otherwise specified in this NPRM or the INA.

E. Members of NATO Armed Forces

Pursuant to Article III of the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, June 19, 1951,[60] North Atlantic Treaty

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[57] See 8 U.S.C. 1354.

[58] See 8 CFR 235.1(c).

[59] See 8 U.S.C. 1354.

[60] Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces. June 19, 1951. [1953, pt.2] 4 U.S.T. 1792. T.I.A.S. No. 2846 (effective Aug. 23, 1953). NATO member countries are: Belgium, Bulgaria, Canada, the Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, the United Kingdom of Great Britain and Northern Ireland, and the United States.

Organization (NATO) military personnel on official duty are normally exempt from passport and visa regulations and immigration inspection on entering and leaving the territory of a NATO party, but, if asked, must present a personal identification card issued by their NATO party of nationality and official orders from an appropriate agency of that country or from NATO.[61] Because their exemption from the passport requirement is based on the NATO Status of Forces Agreement rather than a waiver under section 212(d)(4)(B), they are not subject to section 7209 of IRTPA. Therefore, notwithstanding this proposed rule, NATO military personnel would not be subject to the requirement to present a passport when arriving in the United States at sea and land ports-of-entry.

F. American Indian Card Holders from Kickapoo Band of Texas and Tribe of Oklahoma

U.S. Citizenship and Immigration Services (USCIS) issues American Indian Cards (Form I-872) to members of the Kickapoo Band of Texas and Tribe of Oklahoma to document their status. The American Indian Card is issued pursuant to the Texas Band of Kickapoo Act of 1983 (TBKA), 25 U.S.C. 1300b-13. There are two versions of the American Indian Card: (1) for Kickapoos who opted to become U.S. citizens under the TBKA (the filing deadline for this benefit closed in 1989) and (2) for Kickapoos who opted not to become U.S. citizens, but instead were afforded "pass/repass" status.

We note that by federal law, all of the Kickapoo Indians described above, whether or not they are U.S. citizens, may "pass the borders" between Mexico and the United States,[62] which has historically applied to land border crossings. We propose to continue the current practice of allowing U.S. citizen and Mexican national Kickapoo Indians to

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[61] See 8 CFR 235.1(c).
[62] See Texas Band of Kickapoo Act, Pub. L. 97-429, 96 Stat. 2269 (1983).

enter and exit the United States using their American Indian Cards, issued by USCIS, as an alternative to the traditional passport or passport card at all sea and land border ports-of-entry.

Under the proposed rule. U.S. citizen members of the Kickapoo Band of Texas and Tribe of Oklahoma would be permitted to present the Form I-872 American Indian Card in lieu of a passport or passport card at all sea and land ports of entry when arriving from contiguous territory or adjacent islands. Mexican national members of the Kickapoo Band of Texas and Tribe of Oklahoma would be permitted to present the I-872 in lieu of either a passport and visa or BCC at sea and land ports-of-entry when arriving from contiguous territory or adjacent islands.

G. Members of United States Native American Tribes

IRTPA expressly applies to all United States citizens. Federal statutes apply to Native Americans born in the United States[63] absent some clear indication that Congress did not intend the statute to apply.[64] However, the United States has a special relationship, founded in the Constitution, with its Native American tribes.[65] This relationship permits special rules for Native American members of federally recognized United States tribes.[66]

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[63] In 1924, Congress conferred United States citizenship on all Native Americans born in the United States. Act of June 2, 1924, ch. 233, 43 Stat. 253, codified as INA § 301(b), 8 U.S.C. 1401(b).

[64] See Federal Power Commission v. Tuscarora Indian Nation, 362 U.S. 99, 120 (1960); Taylor v. Ala. Intertribal Council Title IV J.T.P.A., 261 F.3d 1032, 1034-1035 (11th Cir. 2001).

[65] See Constitution, I, § 8, cl.3; Cherokee Nation v Georgia, 30 U.S. 1, 17 (1831); Worcester v. Georgia, 31 U.S. 515, 561 (1832); U.S. v. Sandoval, 231 U.S. 28, 46-47 (1913).

[66] Morton v. Mancari, 417 U.S. 535, 551-55.

Comments on the ANPRM and consultations with United States Native American tribes have emphasized the particular impact which a new document requirement may have on Native Americans belonging to United States tribes who continue to cross the land borders for traditional historic, religious, and other cultural purposes. A number of border tribes are particularly concerned that their members will be required to obtain a passport card or other alternative document to maintain contact with ethnically related communities, including, for some tribes, members who live on traditional land in Mexico or Canada.

1. Proposed Acceptance Of Satisfactory Tribal Enrollment Documents At Traditional Border Crossing Points For Tribes Who Continue Traditional Land Border Crossings.

DHS and DOS do not propose to accept any particular tribal enrollment documents as part of this NPRM. DHS and DOS do propose, however, to consider such documents for the final rule as discussed below. Documents that may be found acceptable and so designated in the final rule must establish the identity and citizenship of members of United States tribes. DHS and DOS propose to accept such tribal enrollment documents only if members of the issuing tribe continue to cross the land border of the United States for a historic, religious or other cultural purpose.[67] The tribal enrollment card must be satisfactory to CBP, may only be used at that tribe's traditional border crossing points and will only be accepted so long as that tribe cooperates with the verification and validation of the document. These tribes must also cooperate with CBP

[67]From our consultations with Native American communities, DHS understands that members of a number of federally recognized tribes maintain contact with ethnically related people across our land border. For example, the Kumeyaay of California, Tohono O'odham of Arizona, Kickapoo of Texas, Oklahoma and Kansas, and Haudenosaunee or Six Nations of the New York State area maintain contact with ethnically related people on the other side of border. We also have been told that the three Kickapoo bands in the United States all lay their dead to rest in a traditional cemetery in Mexico. Traditional border crossings may continue for these and similar historic, religious and cultural purposes.

on the enhancement of their documents in the future as a condition for the continued acceptance of the document.

DHS and DOS invite comments from those United States tribes that enroll members who continue to cross the border for a traditional purpose. Any tribe that wishes to propose its tribal enrollment card as an acceptable alternative document at one or more traditional border crossing points should submit comments supporting acceptance of its tribal enrollment card as an alternative for its members. All such comments should explain fully why the proposed tribal enrollment card should be an acceptable alternative document for its members.

Each comment should explain the traditional border crossings of that tribe by:

a. specifically identifying the federally recognized tribe;

b. indicating the traditional destination or destinations across the border that are visited by members of the tribe;

c. explaining in detail the purpose or purposes of all such travel;

d. relating all such travel to traditional ethnic, religious, cultural or other activities of the tribe;

e. indicating the frequency of the travel; and

f. specifying the border crossing point or points which are generally utilized to travel to each destination.

If the cross-border travel is reciprocated by a tribe, community, or band from Canada or Mexico, the United States tribe should also fully explain the connection with Canadian or Mexican Native Americans including a complete description of all such travel into the United States by individuals from the related Native American community.

The record of the rulemaking will need to detail the enrollment qualifications employed by each United States tribe in order to propose the acceptance of the tribe's enrollment document. All qualifications for membership in any such tribe should be fully described in the comments as well as whether, and in what circumstances, spouses, children or others may be "adopted" into the tribe. In addition, each tribe should indicate the relevant categories of information from its enrollment records that support the acceptance of its tribal enrollment document as an acceptable citizenship and identity document. Such comments should explain and document the reliability of each tribe's records. For that reason, tribes interested in pursuing this option should indicate the information that it is willing to make available to CBP from tribal enrollment records. At a minimum, CBP will need to verify the names, residences, and birthplaces of enrolled tribal members, the identity of the parents of enrolled tribal members who were not born in the United States, and the procedures followed by each tribe to document all such information contained in its enrollment records.

DHS and DOS also welcome comments concerning the determination of which cards are satisfactory as well as information concerning the specific features of each tribal enrollment card used by tribal members who continue to cross the land border for a traditional purpose. All biometric and other security features on each card should be described in full in the comments and a life size image of both sides of a sample card should be submitted for the record with each set of comments.

Comments must also include a description of the issuance process used by the tribe to physically issue the tribal enrollment document. DHS and DOS are particularly interested in the materials and techniques used to ensure that the tribal enrollment

document cannot be obtained improperly. This description must also include a description of the physical security features utilized to ensure that documents are not issued to individuals who are not qualified to receive such documents.

A tribe that issues an acceptable tribal enrollment document may be asked to regularly provide CBP with an electronic copy of current relevant information from its tribal enrollment roles for purposes of verifying and validating tribal enrollment documents. Comments should indicate whether the tribe is willing and able to provide this information on an ongoing basis.

DHS and DOS are also sensitive to the privacy of tribal enrollment records not related to the establishment of identity and citizenship such as alternative tribal names. Comments explaining specific privacy and other concerns related to the sharing of tribal enrollment information are particularly encouraged.

Each tribe which proposes a tribal enrollment card as an alternative border crossing document should indicate whether the tribe is willing to cooperate with CBP on the enhancement of the document in the future.

Tribes will only have the opportunity to participate in the shaping of the standards for tribal documents through this rulemaking. Therefore any tribe that is considering submitting the information outlined above must do so through this rulemaking process, as outlined in this NPRM.

2. Possible Alternative Treatment of United States Native Americans

DHS and DOS are also considering alternative approaches and invite comments on the following approaches:

- Make no special provision for U.S. Native Americans because they have an equal opportunity to obtain the same documents that are available to all other U.S. citizens.
- Consider broader issuance of the American Indian Card now issued to members of the federally recognized Kickapoo Tribes or a similar card.
- Accept tribal enrollment cards from tribes whose members continue traditional border crossings without any limitation on the border crossing point or points where each such tribal enrollment card is accepted.
- Accept all tribal enrollment cards from all federally recognized Native American tribes at some or all border crossing points.

DHS and DOS specifically request comments on these alternatives and suggestions for any other alternatives for U.S. Native Americans.

H. Canadian Indians

Section 289 of the INA[68] refers to the "right" of Native Americans born in Canada to "pass the borders of the United States," provided they possess at least 50 percent of Native American blood. Under this proposed rule, Canadian members of First Nations or "bands" would be permitted to enter the United States at traditional border crossing points with tribal membership documents subject to the same conditions applicable to United States Native Americans. Canadian First Nations or bands who seek to have their tribal enrollment cards accepted for border crossing purposes should submit comments for the record which contain the information requested in subsection G for comparable federally recognized U.S. tribes.

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[68] See 8 U.S.C. 1359.

As previously noted, the new Indian and Northern Affairs Canada card may also be accepted as satisfactory evidence of the citizenship and identity of registered Canadian Indians.

I. Sea Travel from Territories Subject to the Jurisdiction of the United States

As we stated in the Air Rule, for purposes of the passport requirement of section 215(c) of the INA,[69] the term "United States" includes all territory and waters, continental or insular, subject to the jurisdiction of the United States. The United States, for purposes of section 215 of the INA and section 7209 of the IRTPA, includes Guam, Puerto Rico, the U.S. Virgin Islands, American Samoa, Swains Island, and the Commonwealth of the Northern Mariana Islands.[70] Because section 7209, applies only to persons traveling between the United States and foreign countries, these requirements to carry specified documents will not apply to United States citizens and nationals who travel directly between parts of the United States, as defined in section 215(c) of the INA, without touching at a foreign port or place.

J. Outer Continental Shelf Employees

In response to comments received to the ANPRM and Air/Sea NPRM, DHS and DOS are clarifying that offshore workers who work aboard Mobile Offshore Drilling Units (MODUs) attached to the United States Outer Continental Shelf (OCS), and who travel to and from MODUs, would not need to possess a passport or other designated document to re-enter the United States if they do not enter a foreign port or place. Upon return to the United States from a MODU, such an individual would not be considered an applicant for admission for inspection purposes under 8 CFR 235.1. Therefore, this

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[69] See 8 U.S.C. 1185(c).

[70] See 8 CFR 215.1(e) and 22 CFR 50.1.

individual would not need to possess a passport or other designated document when returning to the United States. However, an individual who travels to a MODU from outside of the United States and, therefore, has not been previously inspected and admitted to the United States, would be required to possess a passport and visa, if required. or other designated document when arriving at the U.S. port-of-entry.

DHS and DOS note that for immigration purposes offshore employees on MODUs underway, which are not considered attached, would not need to present a passport or other designated document for re-entry to the United States mainland or other territory if they do not enter a foreign port or place during transit. However, an individual who travels to a MODU from outside the United States OCS and, therefore, has not been previously inspected and admitted to the United States, would be required to possess a passport and visa or other designated document when arriving at the United States port-of-entry by sea.

K. International Boundary and Water Commission Employees

Alien direct and indirect employees of the International Boundary and Water Commission (IBWC) are not required to present a passport and visa when seeking admission to the United States temporarily in connection with their employment.[71] Instead, these employees usually present IBWC identification cards. The exemption is pursuant to treaty and thus not affected by IRPTA. Accordingly, there is no substantive change to the rule regarding alien employees of the IBWC.

[71] Article 20 of the 1944 Treaty Between the United States and Mexico (regarding division of boundary water and the functions of International Boundary and Water Commission), TS 922, Bevan 1166, 59 Stat. 1219; 8 CFR 212.1(c)(5).

U.S. citizen direct and indirect employees of the IBWC who enter the United States from Mexico in connection with their IBWC employment would continue to be able to present an IBWC identification card.

L. Individual Cases of Passport Waivers

The passport requirement may be waived for U.S. citizens in certain individual cases on a case-by-case basis.[72] A waiver may be granted in the case of an emergency, such as individuals in need of emergency medical treatment, fire fighters responding to a call, emergency workers responding to a natural disaster, Medi-vac (land and air ambulance) cases, sick or injured crewmembers, and shipwreck or plane crash survivors. A waiver may also be granted in other cases of humanitarian or national interest.[73]

M. Summary of Document Requirements

The following chart summarizes the acceptable documents for sea and land arrivals from the Western Hemisphere under WHTI.

Group/Population	Acceptable Document(s)	Land	Ferry	Pleasure Vessel	Sea (all other vessels)
All Travelers (U.S., Can., Mex., Berm.) at all sea and land POEs.	Valid Passport (and valid visa, if necessary for foreign travelers)	Yes	Yes	Yes	Yes
U.S. Citizens at all sea and land POEs when arriving from Canada, Mexico, the Caribbean, and Bermuda	Valid Passport card	Yes	Yes	Yes	Yes
Trusted Traveler Members at all sea and land POEs when arriving from contiguous territory or adjacent islands	Trusted Traveler Cards (NEXUS, FAST, SENTRI)	Yes*	Yes*	Yes*	Yes*

[72] See 22 CFR 53.2.

[73] See section 7209(c)(2) of IRTPA.

Group/Population	Acceptable Document(s)	Land	Ferry	Pleasure Vessel	Sea (all other vessels)
U.S. Citizen Merchant Mariners on official mariner business at all sea and land POEs	U.S. Merchant Mariner Document (MMD)	Yes	Yes	Yes	Yes
Mexican Nationals arriving from Mexico	Border Crossing Card (BCC)	Yes**	Yes**	Yes**	No
Lawful Permanent Residents (LPRs) at all land and sea POEs	I-551; I-688 with proper stamp; I-327; I-571; I-512; other evidence of permanent resident status	Yes	Yes	Yes	Yes
U.S. Citizen Cruise Ship Passengers on round trip voyages that begin and end in the same U.S. port	Government-issued photo ID and certified copy of birth certificate	N/A	N/A	N/A	Yes - for round trip voyages that originate in U.S.
U.S. and Canadian Citizen Children Under 16 at all sea and land POEs when arriving from contiguous territory or adjacent islands	Certified copy of birth certificate (government –issued photo ID recommended, but not required.)	Yes	Yes	Yes	Yes
U.S. and Canadian Citizen Children - Groups of Children Under Age 19, under adult supervision with parental/guardian consent at all sea and land POEs when arriving from contiguous territory or adjacent islands	Certified copy of birth certificate and parental/guardian consent (government –issued photo ID recommended, but not required.)	Yes	Yes	Yes	Yes
U.S. Citizen/ Alien Members of U.S. Armed Forces traveling under official orders or permit at all air, sea and land POEs	Military ID and Official Orders	Yes	Yes	Yes	Yes
Members of NATO Armed Forces at all sea and land POEs	Military ID and Official Orders	Yes	Yes	Yes	Yes
U.S. and Mexican Kickapoo at all sea and land POEs when arriving from contiguous territory and adjacent islands	Form I-872 American Indian Card	Yes	Yes	Yes	Yes

* approved for Mexican national members traveling with passport and visa or BCC

** in conjunction with a valid I-94 for travel outside the 25- or 75-mile geographic limits of the BCC.

VI. Section-by-Section Discussion of Proposed Amendments

Based on the discussion above, the following changes are necessary to the regulations.

8 CFR 212.0

This amendment would add a new section 212.0 that would define the terms "adjacent islands", "cruise ship", "ferry", "pleasure vessel", and "United States" for purposes of § 212.1 and § 235.1 of this subchapter of title 8.

8 CFR 212.1

The amendments to this section would revise paragraphs (a)(1) and (a)(2) to add a requirement that Canadians and citizens of the British Overseas Territory of Bermuda present a passport when seeking admission to the United States at sea or land ports-of-entry, except in certain enumerated circumstances. The amendment designates acceptable alternative documents for trusted traveler program (NEXUS, FAST, or SENTRI) members; children under age 16; and children under age 19 traveling in groups.

In addition, the amendments to this section would revise paragraph (c)(1) by deleting the current paragraph (c)(1)(ii), which provides a passport exception to Mexican nationals obtaining a passport at Mexican consulates in the United States. The amendment would add a new paragraph (c)(1)(ii), allowing alternative documentation to be presented by Mexican national Kickapoo holders of a Form I-872 American Indian Card.

8 CFR 235.1

The amendment to this section would revise paragraph (b) to provide that certain categories of United States citizens may present alternative documentation in lieu of a

passport when they enter the United States. The revised paragraph (b) would list the acceptable documentation for each category of U.S. citizen when they enter the United States at sea or land ports-of-entry: a passport; a passport card; a trusted traveler card (NEXUS, FAST, or SENTRI); an unexpired MMD for merchant mariners traveling in conjunction with official maritime business.

The amendments would designate acceptable alternative documents to the passport for: U.S. citizen members of the Armed Forces of the United States; cruise ship passengers on cruises that originate and return to the United States; children under age 16; children under to age 19 traveling in groups; and U.S. citizen direct and indirect employees of the International Boundary and Water Commission traveling in connection with Commission employment with proper identification.

The amendments to this section also remove the current paragraph (d) and add a new paragraph (d), which provides that the Secretary of Homeland Security may designate certain documents or combinations of documents as sufficient to denote identity and citizenship for certain approved pilot programs effective upon publishing notice in the **Federal Register**.

22 CFR Part 41

The amendments to this part would add definitions in a new section numbered 41.0, delete section 41.1(b) and revise sections 41.2(a), (b), and (g). These sections currently provide passport exceptions for Canadian citizens and citizens of the British Overseas Territory of Bermuda. In the amendments, new language is proposed that would require a passport when seeking admission to the United States at sea or land ports-of-entry from contiguous territory within the Western Hemisphere, except in certain

enumerated circumstances. The amendments propose the deletion of section 41.2(b) and the reservation of that subsection for future rulemaking. The visa exception for certain Native Americans born in Canada is moved to revised section 41.2(a). As outlined in the preamble, the proposed rule would consider designation of a satisfactory alternative document for Canadian Native Americans belonging to a First Nation, tribe, or band whose members continue traditional border crossings. The proposed amendment would add passport exceptions for trusted traveler program (NEXUS, FAST, or SENTRI) members; children under age 16; and children under age 19 traveling in groups.

The amendments to 22 CFR 41.2(g) would eliminate the passport exceptions for Mexican nationals obtaining a passport at Mexican consulates in the United States and would add a passport exception for Mexican national Kickapoo holders of a Form I-872 American Indian Card.

22 CFR 53.2

The proposed amendments to this section would add additional categories of United States citizens who may present alternative documentation in lieu of a passport when traveling by land and sea. Specifically, the amendments would add passport exceptions for: U.S. citizen members of the Armed Forces of the United States; children under age 16; and children under age 19 traveling in groups.

VII. REGULATORY ANALYSES

A. Executive Order 12866: Regulatory Planning and Review

This rule is considered to be an economically significant regulatory action under Executive Order 12866 because it may result in the expenditure of over $100 million in any one year. Accordingly, this proposed rule has been reviewed by the Office of

Management and Budget (OMB). The following summary presents the costs and benefits of the proposed rule plus a range of alternatives considered. (The "Regulatory Assessment" can be found in the docket for this rulemaking: http://www.regulations.gov; see also http://www.cbp.gov). There are two documents: one document examines the impacts of WHTI in the cruise ship environment; the second document examines the impacts on border crossings by land, ferry, and pleasure vessels. Comments regarding both of the analyses and the underlying assumptions are encouraged and may be submitted by any of the methods described under the "Addresses" section of this document.

The regulatory assessments summarized here consider U.S. travelers entering the United States via land ports-of-entry on the northern and southern borders (including arrivals by ferry and pleasure boat) as well as certain cruise ship passengers. The impacts to the public due to the requirement to obtain the necessary documentation for air travel were considered in a previous analysis examining the implementation of WHTI in the air environment (the Regulatory Assessment for the November 2006 Final Rule for implementation of WHTI in the air environment can be found at http://www.regulations.gov; document number USCBP-2006-0097-0108). If travelers have already purchased a passport for travel in the air environment, they would not need to purchase a passport for travel in the land or sea environments. We do not attempt to estimate with any precision the number of travelers who travel in more than one environment, and, therefore, may have already obtained a passport due to the air rule and will not incur any burden due to this rulemaking. To the extent that the three traveling

populations overlap in the air, land, and sea environments, we have potentially overestimated the direct costs of the proposed rule presented here.

The period of analysis is 2005–2014 (10 years). We calculate costs beginning in 2005 because although the full suite of WHTI rules is not yet in place, DOS has already seen a dramatic increase in passport applications since the WHTI plan was announced in early 2005. We account for those passports obtained prior to full implementation to more accurately estimate the economic impacts of the rule as well as to incorporate the fairly sizable percentage of travelers that currently hold passports in anticipation of the new requirements.

In addition to the traditional passport book, the Secretary of Homeland Security is designating the passport card, CBP trusted traveler cards (NEXUS, SENTRI, FAST), the Merchant Mariner Document, and specified documents from a DHS-approved WHTI pilot program as generally acceptable travel documents for US citizens to enter the United States at land and sea ports-of-entry. Because DHS and DOS believe that children under the age of 16 pose a low security threat in the sea and land environments, U.S. children may present a certified copy of a birth certificate in lieu of the designated documents. Additionally, DHS and DOS have determined that exempting certain cruise passengers from a passport requirement is the best approach to balance security and travel efficiency considerations in the cruise ship environment. To meet the cruise exemptions, a passenger must board the cruise ship at a port or place within the United States and the passenger must return on the same ship to the same U.S. port or place from where he or she originally departed.

For the summary of the analysis presented here, CBP assumes that only the passport, trusted traveler cards, and the MMD are available in the first years of the analysis (recalling that the period of analysis begins in 2005 when passport cards and pilot-program documents were not yet available). CBP also assumes that most children under 16 will not obtain a passport or passport card but will instead use alternative documentation (birth certificates). The estimates reflect that CBP trusted traveler cards would be accepted at land and sea ports-of-entry. Finally, CBP assumes that most of the U.S. cruise passenger population will present alternative documentation (government-issued photo ID and certified copy of birth certificate) because they meet the waiver criteria proposed.

To estimate the costs of the rule, we follow this general analytical framework—

- Determine the number of U.S. travelers that will be covered.
- Determine how many already hold acceptable documents.
- Determine how many will opt to obtain passports or passport cards, and estimate their lost "consumer surplus."
- Determine how many will forgo travel instead of obtaining passports or passport cards, and estimate their lost "consumer surplus"

We estimate covered land travelers using multiple sources, including: crossing data from the Bureau of Transportation Statistics (BTS, 2004 data), a study of passport demand conducted by DOS[74], and a host of regional studies conducted by state and local governments and academic research centers.

[74] A STUDY TO DETERMINE THE INAUGURAL AND ANNUAL DEMAND FOR US PASSPORTS BY US CITIZENS LIVING IN AND TRAVELING TO CANADA, MEXICO AND THE CARIBBEAN (U.S. State Department, Prepared by Bearing Point Oct. 2005).

Other than the DOS passport demand study, no source exists to our knowledge that has estimated the total number of land entrants nationwide. Researchers almost always count or estimate **crossings**, not **crossers** and focus on a region or locality, not an entire border. Building on the work conducted for the DOS passport study, we distilled approximately 300 million annual crossings into the number of frequent (defined as at least once a year), infrequent (once every 3 years), and rare (once every 10 years) "unique U.S. adult travelers." We then estimate the number of travelers without the documentation this rulemaking proposes to be required and estimate the cost to obtain such documents. The fee for the passport varies depending on the age of the applicant, whether or not the applicant is renewing a passport, whether or not the applicant is requesting expedited service, and whether or not the applicant obtains a passport or a passport card. Additionally, we consider the amount of time required to obtain the document and the value of that time. To estimate the value of an applicant's time in the land environment, we conducted new research that builds on existing estimates from the Department of Transportation[75]. To estimate the value of an applicant's time in the sea environment, we use estimates for air travelers' value of time (recall that air and sea travelers share very similar characteristics) from the Federal Aviation Administration (FAA, 2005 data). We use the 2005 DOS passport demand study and CBP statistics on the trusted traveler programs to estimate how many unique U.S. travelers already hold acceptable documents.

[75] U.S. Department of Transportation, **Departmental Guidance for the Valuation of Travel Time in Economic Analysis** (Memorandum from F.E. Kruesi) (April 1997); and U.S. Department of Transportation. **Revised Departmental Guidance, Valuation of Travel Time in Economic Analysis** (Memorandum from E.H. Frankel) (February 2003).

We estimate covered cruise passengers using data from the Maritime Administration (MARAD, 2006 data) and itineraries available on the cruise line websites (for 2007). The overwhelming majority of Western Hemisphere cruise passengers—92 percent—would fall under the proposed cruise-passenger waiver. Passengers not covered by the waiver fall into four trade markets—Alaska (72 percent), Trans-Panama Canal (16 percent), U.S. Pacific Coast (8 percent), and Canada/New England (4 percent). We estimate that these passengers will have to obtain a passport rather than one of the other acceptable documents because these travelers will likely have an international flight as part of their cruise vacation, and only the passport is a globally accepted travel document. We use a comment to the August 2006 NPRM for implementation of WHTI in the air and sea environments (71 FR 46155) from the International Council of Cruise Lines to estimate how many unique U.S. cruise travelers already hold acceptable documentation; however, we will continue to study this issue.

Based on CBP's analysis, approximately 3.2 million U.S. travelers are affected by the proposed rule in the first year of analysis (2005). Of these, approximately 2.9 million enter through a land-border crossing (via privately owned vehicle, commercial truck, bus, train, on foot) and ferry and recreational boat landing sites. An estimated 0.3 million are cruise passengers that do not meet the waiver criteria in the NPRM (note that over 90 percent of U.S. cruise passengers are expected to meet the proposed waiver criteria). CBP estimates that the traveling public acquired approximately 3.2 million passports in the first year of the analysis, in the anticipation of the passport requirements, at a direct cost of $417 million. These estimates are summarized in Table A.

Table A. First-Year Estimates (2005) for U.S. Adult Travelers (all estimates in millions)

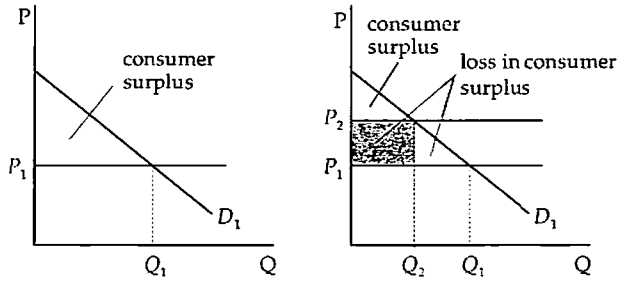
Affected Travelers	
Land/ferry/pleasure boat crossers	2.9
Cruise passengers	0.3
Total	3.2
Passports demanded	
Land/ferry/pleasure boat crossers	2.7
Cruise passengers	0.3
Total	3.0
Total cost of passports	
Land-border crossers	$370.7
Cruise passengers	45.8
Total	$416.5

To estimate potential forgone travel in the land environment, we derive traveler demand curves for access to Mexico and Canada based on survey responses collected in the DOS passport study. We estimate that when the rule is implemented, the number of unique U.S. travelers to Mexico who are frequent travelers decreases by 6.5 percent, the unique U.S. travelers who are infrequent travelers decreases by 7.3 percent, and the unique U.S. travelers who are rare travelers decreases by 17.8 percent. The number of U.S. travelers visiting Canada who are frequent travelers decreases by 3.7 percent, the unique U.S. travelers who are infrequent travelers decreases by 10.7 percent, and the unique U.S. travelers who are rare travelers decreases by 10.9 percent. These estimates account for the use of a passport card for those travelers who choose to obtain one. For unique travelers deciding to forgo future visits, their implied value for access to these countries is less than the cost of obtaining a passport card.

To estimate potential forgone travel in the relatively small number of cruises affected in the sea environment, we use a study from Coleman, Meyer, and Scheffman (2003), which described the Federal Trade Commission investigation into potential

impacts of two cruise-line mergers and estimated a demand elasticity for cruise travel. We estimate that the number of travelers decreases by 24.4 percent, 13.4 percent, 7.0 percent, and 5.6 percent for travelers on short (1 to 5 nights), medium (6 to 8 nights), long (9 to 17 nights), and very long cruises (over 17 nights) once the rule is implemented.

We then estimate total losses in consumer surplus. The first figure below represents U.S. travelers' willingness to pay (D_1) for access to Mexico and Canada. At price P_1, the number of US travelers without passports currently making trips to these countries is represented by Q_1. As seen in the second figure, if the government requires travelers to obtain a passport or passport card in order to take trips to Mexico and Canada, the price of access increases by the cost of obtaining the new document, to P_2. As a result, the number of travelers making trips to these countries decreases to Q_2.



All travelers in this figure experience a loss in consumer surplus; the size of the surplus loss depends on their willingness to pay for access to these countries. The lost surplus experienced by travelers whose willingness to pay exceeds P_2 is shown in the dark gray rectangle, and is calculated as $(P_2 - P_1) * Q_2$. In other words, the lost consumer surplus of travelers willing to buy the passport or passport card is simply the cost $(P_2 - P_1)$ of the passport or passport card. Travelers whose willingness to pay for access to these

countries is less than the price of the passport or passport card will experience a loss equal to the area of the light gray triangle, calculated as $\frac{1}{2} * (Q_1 - Q_2) * (P_2 - P_1)$.

Costs of the rule (expressed as losses in consumer surplus) are summed by year of the analysis. We then add the government costs of implementing WHTI over the period of analysis. Ten-year costs are $3.3 billion at the 3 percent discount rate and $2.8 billion at 7 percent, as shown in Table B. Annualized costs are $384 million at 3 percent and $406 million at 7 percent.

Table B. Total Costs for U.S. Travelers over the Period of Analysis (2005–2014, in $millions).

Year	Cost	3% discount rate	7% discount rate
2005	$436	$436	$435
2006	173	168	163
2007	405	381	357
2008	603	552	498
2009	476	423	368
2010	386	333	280
2011	297	249	202
2012	291	236	184
2013	276	218	163
2014	361	277	198
Total		$3,272	$2,848

The primary analysis for land summarized here assumes a constant number of border crossers over the period of analysis; in the complete Regulatory Assessment, we also consider scenarios where the number of border crossers both increases and decreases over the period of analysis. It is worth noting that border crossings have been mostly decreasing at both the northern and southern borders since 1999. The analysis for sea travel assumes a 6 percent annual increase in passenger counts over the period of analysis as the Western Hemisphere cruise industry continues to experience growth.

Finally, we conduct a formal uncertainty (Monte Carlo) analysis to test our assumptions in the land environment. We first conducted a preliminary sensitivity analysis to identify the variables that have the most significant effect on consumer welfare losses. We found that the frequency of travel (frequent, infrequent, rare), crossings at multiple ports-of-entry, future annual affected individuals, and the amount of time spent applying for documentation were the most sensitive variables in the analysis. The variables that did not appear to have an impact on consumer losses were the estimated number of crossings by Lawful Permanent Residents (LPRs) or Native Americans and estimated future timing with which travelers will apply for acceptable documentation. After we conducted our formal Monte Carlo we found that our most sensitive assumptions are: the projected crossing growth rate, the frequency of travel, and the number of new unique travelers that enter the population annually. The results of the Monte Carlo analysis are presented in Table C. Note that these estimates do not include the government costs of implementation, estimated at an annualized cost of $100 million (3 percent discount rate, 10 years), because we have no basis for assigning uncertainty parameters for government costs.

Table C. Summary of Key Characteristics of Probability Distributions of Total Welfare Losses in the Land Environment (2005 – 2014, in $billions), 3 Percent Discount Rate

Statistic	Value
Trials	10.000
Mean	$2.1
Median	$2.1
Std Dev	$0.5
Variance	2.8E+08
5th Percentile	$1.4
95th Percentile	$3.1
Point Estimate	$2.2

We then consider the secondary impacts of forgone travel in the land and sea environments. Forgone travel will result in gains and losses in the United States, Canada, and Mexico. For this analysis, we made the simplifying assumption that if U.S. citizens forgo travel to Canada and Mexico, their expenditures that would have been spent outside the country now remain here. In this case, industries receiving the diverted expenditure in the United States experience a gain, while the travel and related industries in Canada and Mexico suffer a loss. Conversely, if Canadian and Mexican citizens forgo travel to the United States, their potential expenditures remain abroad—a loss for the travel and related industries in the U.S., but a gain to Canada and Mexico. Please note that "gains" and "losses" in this analysis cannot readily be compared to the costs and benefits of the rulemaking, since they represent primarily transfers in and out of the U.S. economy.

For cruise passengers, we have only rough estimates of where U.S. passengers come from, how they travel to and from the ports where they embark, where they go, and the activities they engage in while cruising. We know even less about how they will alter their behavior if they do, in fact, forgo obtaining a passport. Ideally, we could model the indirect impacts of the rule with an input-output model (either static or dynamic) that could give us a reasonable estimation of the level the impact, the sectors affected, and regional impacts. Unfortunately, given the dearth of data, the assumptions we had to make, the small numbers of travelers who are estimated to forgo travel, and the fact that much of their travel experience occurs outside the United States, using such a model would not likely produce meaningful results. We recognize, however, that multiple industries could be indirectly affected by forgone cruise travel, including (but not limited to): cruise lines; cruise terminals and their support services; air carriers and their support

services; travel agents: traveler accommodations; dining services; retail shopping: tour operators; scenic and sightseeing transportation; hired transportation (taxis, buses); and arts, entertainment, and recreation.

According to the MARAD dataset used for the sea analysis, there are 17 cruise lines operating in the Western Hemisphere, 9 of which are currently offering cruises that would be indirectly affected by a passport requirement. While we expect that cruise lines will be indirectly affected by the rule, how they will be affected depends on their itineraries, the length of their cruises, their current capacity, and future expansion, as well as by travelers' decisions. We expect short cruises (1 to 5 nights) to be most notably affected because the passport represents a greater percentage of the overall trip cost, passengers on these cruises are less likely to already hold a passport, and travel plans for these cruises are frequently made closer to voyage time. Longer cruises are less likely to be affected because these trips are planned well in advance, passengers on these voyages are more likely to already possess a passport, and the passport cost is a smaller fraction of the total trip cost.

Because border-crossing activity is predominantly a localized phenomenon, and the activities engaged in while visiting the United States are well documented in existing studies, we can explore the potential impacts of forgone travel more quantitatively in the land environment. Using various studies on average spending per trip in the United States, Canada, and Mexico, we estimate the net results of changes in expenditure flows in 2008 (the presumed first year the requirements will be implemented) and subsequent years. Because Mexican crossers already possess acceptable documentation to enter the

United States (passport or BCC), we do not estimate that Mexican travelers will forgo travel to the United States. The summary of expenditure flows is presented in Table D.

Table D. Net Expenditure Flows in North America, 2008 and Subsequent Years ($millions)

2008	
Spending by U.S. travelers who forgo travel to Mexico	+$440
Spending by Mexican travelers who forgo travel to the United States	0
Spending by U.S. travelers who forgo travel to Canada	+170
Spending by Canadian travelers who forgo travel to United States	-200
Net	$410
Subsequent years (annual)	
Spending by U.S. travelers who forgo travel to Mexico	+$310
Spending by Mexican travelers who forgo travel to United States	0
Spending by U.S. travelers who forgo travel to Canada	+120
Spending by Canadian travelers who forgo travel to United States	-200
Net	$230

To examine these impacts more locally, we conduct eight case studies using a commonly applied input-output model (IMPLAN), which examines regional changes in economic activity given an external stimulus affecting those activities. In all our case studies but one, forgone border crossings attributable to WHTI have a less-than-1-percent impact on the regional economy both in terms of output and employment. The results of these eight case studies are presented in Table E.

Table E. Modeled Distributional Effects in Eight Case Studies

Study area (counties)	State	Change as % of total...	
		Output	Employment
San Diego	California	+0.03	+0.03
Pima, Santa Cruz	Arizona	+0.03	+0.03
Hidalgo, Cameron	Texas	+0.22	+0.19
Presidio	Texas	+0.55	+0.62
Niagara, Erie	New York	-0.06	-0.12
Washington	Maine	-0.61	-1.41
Macomb, Wayne, Oakland	Michigan	-0.01	-0.01
Whatcom	Washington	-0.21	-0.53

As shown, we anticipate very small net positive changes in the southern-border case studies because Mexican travelers to the United States use existing documentation, and their travel is not affected. The net change in regional output and employment is negative (though still very small) in the northern-border case studies because Canadian travelers forgoing trips outnumber U.S. travelers staying in the United States and because Canadian travelers to the United States generally spend more per trip than U.S. travelers to Canada. On both borders, those U.S. travelers that forgo travel do not necessarily spend the money they would have spent outside the United States in the case-study region; they may spend it outside the region, and thus outside the model.

As this is one of the first comprehensive attempts by DHS to develop a model to estimate localized cross-border economic impacts due to a rulemaking, we explicitly seek comment on this proposed analysis. Specifically, we may not have captured all of the changes in local expenditures that may be attributable to the proposed rulemaking. For example, U.S. citizens purchasing documentation required for travel to Canada or Mexico will not have that money available for other consumption. Similarly. Canadian travelers may spend less in the United States on travel to compensate for the costs of acquiring documentation.

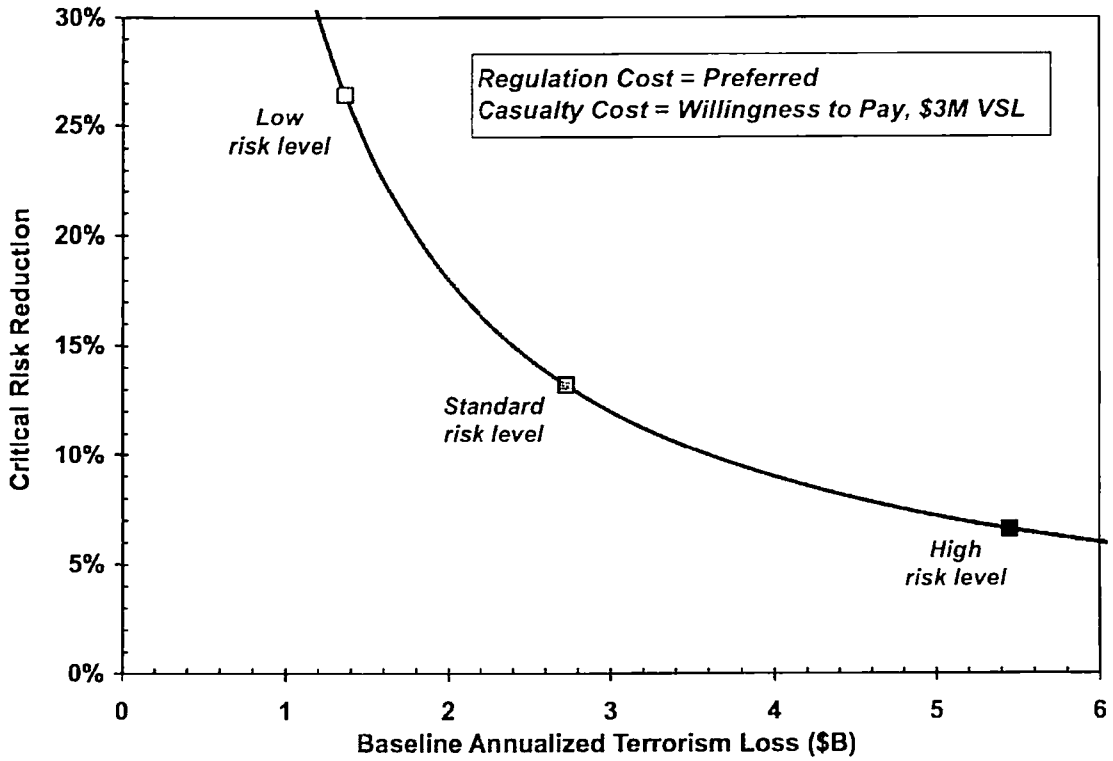
Finally, because the benefits of homeland security regulations cannot readily be quantified using traditional analytical methods, we conduct a "breakeven analysis" to determine what the reduction in risk would have to be given the estimated costs of the implementation of WHTI (land environment only). Using the Risk Management Solutions U.S. Terrorism Risk Model (RMS model), we estimated the critical risk

reduction that would have to occur in order for the costs of the rule to equal the benefits—or break even.

The RMS model has been developed for use by the insurance industry and provides a comprehensive assessment of the overall terrorism risk from both foreign and domestic terrorist organizations. The RMS model generates a probabilistic estimate of the overall terrorism risk from loss estimates for dozens of types of potential attacks against several thousand potential targets of terrorism across the United States. For each attack mode-target pair (constituting an individual scenario) the model accounts for the probability that a successful attack will occur and the consequences of the attack. RMS derives attack probabilities from a semi-annual structured expert elicitation process focusing on terrorists' intentions and capabilities. It bases scenario consequences on physical modeling of attack phenomena and casts target characteristics in terms of property damage and casualties of interest to insurers. Specifically, property damages include costs of damaged buildings, loss of building contents, and loss from business interruption associated with property to which law enforcement prohibits entry immediately following a terrorist attack. RMS classifies casualties based on injury-severity categories used by the worker compensation insurance industry.

The results in the figure below are for the cost estimates presented above and casualty costs based on willingness-to-pay estimates and a $3 million value of a statistical life (VSL). These results show that a decrease in perceived risk leads to a smaller annualized loss and a greater critical risk reduction, and an increase in perceived risk leads to a greater annualized loss and a smaller critical risk reduction. The total range in

critical risk reduction is a factor of four and ranges from 6.6 to 26 percent, with a critical risk reduction of 13 percent required for the standard risk scenario.



The critical risk reduction for all risk levels considered and multiple injury and fatality estimates are presented in Table F. As shown, critical risk reduction ranges from 3.5 percent (high risk, quality-of-life, VSL $6 million) to 35 percent (low risk, cost-of-injury, no VSL). Note that because the annualized costs of the rulemaking are very similar at the 7 percent discount rate, the critical risk reduction estimates presented in Table F would not change appreciably at the 7 percent rate.

Table F. Critical Risk Reduction for the Proposed Rule (standard risk scenario, 3 percent discount rate)

	Critical Risk Reduction (%)		
	Low	Standard	High
Cost of injury (fatality = $1.1m)	35	17	8.7
Willingness to pay (VSL = $3m)	26	13	6.6
Quality of life (VSL = $3m)	22	11	5.6
Willingness to pay (VSL = $6m)	18	8.8	4.4
Quality of life (VSL = $6m)	14	6.9	3.5

In addition to the methodology used to value casualties, several other key factors affect the critical risk reduction estimate. These factors include: the uncertainty in the risk estimate produced by the RMS model: the potential for other types of baseline losses not captured in the RMS model; and the size of other non-quantified direct and ancillary benefits of the rule. The RMS model likely underestimates total baseline terrorism loss because it only reflects the direct, insurable costs of terrorism. It does not include any indirect losses that would result from continued change in consumption patterns or preferences or that would result from propagating consequences of interdependent infrastructure systems. For example, the RMS model does not capture the economic disruption of a terrorism event beyond the immediate insured losses. Furthermore, the model also excludes non-worker casualty losses and losses associated with government buildings and employees. Finally, the model may not capture less-tangible components of losses that the public wishes to avoid, such as the fear and anxiety associated with experiencing a terrorist attack. Omission of these losses will cause us to overstate the necessary risk reductions.

Alternatives to the Proposed Rule

CBP considered the following alternatives to the NPRM—

1. Require all U.S. travelers (including children) to present a valid passport book upon return to the United States from countries in the Western Hemisphere
2. Require all U.S. travelers (including children) to present a valid passport book, passport card, CBP trusted traveler document, MMD, or a specified document from a DHS-approved WHTI pilot program upon return to the United States from countries in the Western Hemisphere.

Calculations of costs for the alternatives can be found in the two Regulatory Assessments for the NPRM.

Alternative 1: Require all U.S. travelers (including children) to present a valid passport book

This alternative would require all U.S. citizens, including minors under 16 and all cruise passengers, to present a valid passport book. The passport card, CBP trusted traveler documents, the MMD, and documents from DHS-approved pilot programs would not be accepted. This would be a more stringent alternative, and it was rejected as potentially too costly and burdensome for low-risk populations of travelers. While the traditional passport book will always be an acceptable document for a U.S. citizen to present upon entry to the United States, DHS and DOS believe that the cost of a traditional passport book may be too burdensome for some U.S. citizens, particularly those living in border communities where land-border crossings are an integral part of everyday life. As stated previously, DHS and DOS believe that children under the age of 16 pose a low security threat in the land and sea environments and will be permitted to present a certified copy of a birth certificate when arriving in the United States at all land

and sea ports-of-entry from within the Western Hemisphere. Additionally. DHS and CBP have developed an alternative procedure for children traveling in groups. DHS and DOS have also determined that exempting certain cruise passengers from a passport requirement is the best approach to balance security and travel efficiency considerations in the cruise ship environment.

Alternative 2: Require all U.S. travelers (including all children) to present a valid passport book, passport card, or other approved document

The second alternative is similar to the proposed rule, though it includes children and does not exempt cruise passengers. It is again more stringent than the proposed rule. While this alternative incorporates the low-cost passport card and CBP trusted traveler cards as acceptable travel documents. this alternative was ultimately rejected as potentially too costly and burdensome for low-risk populations of travelers (certain cruise passengers and minors under 16).

Table G presents a comparison of the costs of the proposed rule and the alternatives considered.

Table G. Comparison of Regulatory Alternatives (in $millions)

Alternative	10-year cost (7%)	Cost compared to proposed rule	Reason rejected
Proposed rule	$2,848	n/a	
1. Passport book only for all U.S. travelers	$5,254	+$2,406	Cost of a passport considered too high for citizens in border communities; low-risk traveling populations (certain cruise passengers. children under 16) unduly burdened
2. Passport book, passport card. and other designated documents for all U.S. travelers	$5,448	+$2,600	Low-risk traveling populations (certain cruise passengers, children under 16) unduly burdened

It is important to note that for scenarios where the passport card is acceptable (the proposed rule and Alternative 2), the estimates include government implementation costs for CBP to install the appropriate technology at land ports-of-entry to read RFID-enabled passport cards and the next generation of CBP trusted traveler documents. These technology deployment costs are estimated to be substantial. particularly in the early phases of implementation. As a result, the alternatives allowing more documents than just the passport cost more over 10 years than alternatives allowing only the passport. which can be processed with existing readers that scan the passport's MRZ. Providing waivers for minors and most cruise passengers results in notable cost savings over 10 years (about $2.5 billion depending on the documents considered).

The passport card is designed specifically to address the needs and travel patterns of those who live in land-border communities and frequently cross the border in their day-to-day activities. The passport card is intended not only to enhance security efforts for international land and sea travel between the U.S. and Canada, Mexico, the Caribbean, or Bermuda, but is also intended to assist DHS in expediting the movement of legitimate travel within the Western Hemisphere.

In particular, the land border presents complex operational challenges. in that a tremendous amount of traffic must be processed in a short amount of time. There are often several passengers in a vehicle, and multiple vehicles arriving at one time at each land border port-of-entry. Many of the people encountered crossing at the land border ports-of-entry are frequent crossers. However, CBP does not receive advance

information on these land border travelers. For these reasons, the Department of State, in consultation with DHS, agreed to develop a technology-based solution.

The data printed on the face of the passport card will be the same as that currently shown on the data page of the U.S. passport—bearer's facial image, full name, date and place of birth, passport card number, dates of validity and issuing authority. The reverse side of the passport card will carry a machine-readable zone (MRZ) and notation that the card is valid only for international land and sea travel between the U.S. and Canada, Mexico, the Caribbean, or Bermuda. In addition, each passport card will utilize Radio Frequency (RF) technology to store and transmit only a unique reference number that will serve as a link to information safeguarded in a secure database managed by CBP. This reference number will be assigned by Department of State at the time the passport card is issued and no personal or biographic information will be stored or transmitted using Radio Frequency (RF) technology. Presenting the passport card will allow the linked information to be retrieved from the secure DHS database to allow the CBP officer to compare the citizen presenting him or herself for entry into the United States with the original issuance record to ensure that it is the same person. This database could include additional information, for example, information about the bearer's membership in one of CBP's trusted traveler programs (NEXUS, SENTRI, or FAST).

After reviewing a number of options to provide the CBP officer with appropriate personal information to facilitate the processing of travelers, DOS and DHS believe that the most promising technology is RF technology. This technology utilizes a passive chip deriving its power from the reader that communicates with it. We focused on RF vicinity read (GEN 2) technology.

RF vicinity read technology conforms to International Standards Organization (ISO) 18000 6-C specifications. Vicinity read technology would allow the passport card data to be read at a distance of up to 20 feet from the reader. The vicinity read chip would contain only a unique reference number that will serve as a link to information safeguarded in a secure database managed by CBP. In addition to having commercial applications, vicinity-read technology is currently being used in a number of DHS programs. Operationally, it has similarities to CBP land border international trusted traveler programs, and DHS's pilot electronic I–94 program currently in place at several land border crossings in that it will only store and transmit a unique reference number and no personal or biographic information. Vicinity read technology is similar to that used in highway toll systems throughout the U.S. From an operational sense, this technology would allow passengers approaching a land crossing in vehicles to present the passport card to the reader easily from within the vehicle and these readers could process information from up to eight cards at one time. In addition, the use of vicinity technology would provide information to border security personnel further in advance of a traveler's arrival at an inspection booth, facilitate a faster processing of individuals, and provide more opportunities to leverage existing technologies.

DHS selected RF vicinity read technology for its border management system. To ensure compatibility and interoperability with the DHS border management system, and to secure significant travel facilitation advantages, DOS proposed to produce the passport card utilizing RF vicinity read technology (see 71 FR 60928 for DOS's proposed rule, which contains a more detailed discussion of the advantages and disadvantages of different technology choices). The selection of vicinity read technology for the passport

card was made in an effort to ensure a seamless operational environment with DHS, and provide the infrastructure support to strengthen our national security at U.S. land borders. DOS proposed to produce the card and deliver them with a thin protective sleeve, designed to protect the card from unauthorized access. The card could be stored in the sleeve and removed only when needed.

In addition to the State Department's proposed rule referenced above, please see the DHS Land border analysis document for a more detailed discussion of both the deployment and other costs of the proposed form of the passport card, and the advantages to the border management system provided by the RF vicinity read technology.

Accounting Statement

As required by OMB Circular A-4, CBP has prepared an accounting statement showing the classification of the expenditures associated with this rule. The table below provides an estimate of the dollar amount of these costs and benefits, expressed in 2005 dollars, at 7 percent and 3 percent discount rates. We estimate that the cost of this rule will be approximately $406 million annualized (7 percent discount rate) and approximately $384 million annualized (3 percent discount rate). Non-quantified benefits are enhanced security and efficiency.

Accounting Statement: Classification of Expenditures, 2005–2014 (2005 Dollars)

	3% Discount Rate	7% Discount Rate
Costs		
Annualized monetized costs	$384 million	$406 million
Annualized quantified, but un-monetized costs	None	None
Qualitative (un-quantified) costs	Indirect costs to the travel and tourism industry	Indirect costs to the travel and tourism industry
Benefits		
Annualized monetized benefits	None quantified	None quantified
Annualized quantified, but un-monetized benefits	None quantified	None quantified
Qualitative (un-quantified) benefits	Enhanced security and efficiency	Enhanced security and efficiency

B. Regulatory Flexibility Act

CBP has prepared this section to examine the impacts of the proposed rule on small entities as required by the Regulatory Flexibility Act (RFA).[76] A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

When considering the impacts on small entities for the purpose of complying with the RFA, CBP consulted the Small Business Administration's guidance document for conducting regulatory flexibility analysis.[77] Per this guidance, a regulatory flexibility analysis is required when an agency determines that the rule will have a significant

[76] See 5 U.S.C. 601-612.

[77] See Small Business Administration, Office of Advocacy, A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act, May 2003.

economic impact on a substantial number of small entities that are subject to the requirements of the rule.[78] This guidance document also includes a good discussion describing how direct and indirect costs of a regulation are considered differently for the purposes of the RFA. CBP does not believe that small entities are subject to the requirements of the proposed rule; individuals are subject to the requirements, and individuals are not considered small entities. To wit, "The courts have held that the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates them."[79]

As described in the Regulatory Assessment for this rulemaking, CBP could not quantify the indirect impacts of the proposed rule with any degree of certainty; it instead focused the analysis on the direct costs to individuals recognizing that some small entities will face indirect impacts.

Some of the small entities indirectly affected will be foreign owned and will be located outside the United States. Additionally, reductions in international travel that result from the proposed rule could lead to gains for domestic industries. Most travelers are expected to eventually obtain passports and continue traveling. Consequently, indirect effects are expected to be spread over wide swaths of domestic and foreign economies.

Small businesses may be indirectly affected by the proposed rule if international travelers forego travel to affected Western Hemisphere countries. These industry sectors may include (but are not limited to):

— Manufacturing

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[78] See id. at 69.

[79] See id. at 20.

— Wholesale trade

— Retail trade

— Transportation (including water, air. truck. bus. and rail)

— Real estate

— Arts, entertainment. and recreation

— Accommodation and food services

Because this rule does not directly regulate small entities, we do not believe that this rule has a significant economic impact on a substantial number of small entities. The exception could be certain "sole proprietors" who could be considered small businesses and could be directly affected by the rule if their occupations required travel within the Western Hemisphere where a passport was not previously required. The cost to such businesses would be only $128 for a first-time passport applicant, or $195 if expedited service were requested, and would only be incurred if the individual needed a passport. We believe such an expense would not rise to the level of being a "significant economic impact." We welcome comments on our assumptions. The most helpful comments are those that can provide specific information or examples of a direct impact on small entities. If we do not receive comments that demonstrate that the rule causes small entities to incur direct costs. we may certify that this action does not have a significant economic impact on a substantial number of small entities during the final rule.

The complete analysis of impacts to small entities for this proposed rulemaking is available on the CBP Web site at: http://www.regulations.gov; see also http://www.cbp.gov. Comments regarding the analysis and the underlying assumptions

are encouraged and may be submitted by any of the methods described under the "Addresses" section of this document.

C. Executive Order 13132: Federalism

Executive Order 13132 requires DHS and DOS to develop a process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." Policies that have federalism implications are defined in the Executive Order to include rules that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." DHS and DOS have analyzed the proposed rule in accordance with the principles and criteria in the Executive Order and have determined that it does not have federalism implications or a substantial direct effect on the States. The proposed rule requires U.S. citizens and nonimmigrant aliens from Canada, Bermuda and Mexico entering the United States by land or by sea from Western Hemisphere countries to present a valid passport or other identified alternative document. States do not conduct activities with which this rule would interfere. For these reasons, this proposed rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

D. Unfunded Mandates Reform Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Pub. L. 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal

governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the UMRA, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the UMRA is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the UMRA, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposal would not impose a significant cost or uniquely affect small governments. The proposal does have an effect on the private sector of $100 million or more in any one year. This impact is discussed under the Executive Order 12866 discussion.

E. National Environmental Policy Act of 1969

DHS and CBP, in consultation with DOS, the Environmental Protection Agency and the General Services Administration have been reviewing the potential environmental and other impacts of this proposed rule in accordance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the regulations of the Council on Environmental Quality (40 CFR part 1500), and DHS Management

Directive 5100.1. Environmental Planning Program of April 19, 2006. A programmatic environmental assessment (PEA) is being prepared that examines, among other things, potential alternatives regarding implementation of the proposed rule at the various land and sea ports of entry and what, if any, environmental impacts may result from the proposed rule and its implementation. The PEA will serve as the basis for the determination whether the proposed rule and its implementation will have a significant impact on the quality of the human environment such that it will require further analysis under NEPA.

A Notice of Availability will be published in the **Federal Register**, and the PEA will be available for viewing and comments on http://www.regulations.gov. The Notice of Availability will also be published in newspapers, and copies placed in public libraries, in certain border areas. Additionally, copies of the PEA will be posted on the CBP website at http://www.cbp.gov. The Notice of Availability will provide details on how the public may provide comments on the PEA. In addition, copies may be obtained by writing to: U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, N.W., Room 5.4C, Attn: WHTI Environmental Assessment, Washington, D.C. 20229.

F. Paperwork Reduction Act

1. Passports/Passport Cards

The collection of information requirement for passports is contained in 22 CFR 51.20 and 51.21. The required information is necessary for DOS Passport Services to issue a United States passport in the exercise of authorities granted to the Secretary of State in 22 U.S.C. Section 211a et seq. and Executive Order 11295 (August 5, 1966) for the issuance of passports to United States citizens and non-citizen nationals. The

issuance of U.S. passports requires the determination of identity and nationality with reference to the provisions of Title III of the Immigration and Nationality Act (8 U.S.C. sections 1401–1504), the Fourteenth Amendment to the Constitution of the United States, and other applicable treaties and laws. The primary purpose for soliciting the information is to establish nationality, identity, and entitlement to the issuance of a United States passport or related service and to properly administer and enforce the laws pertaining to issuance thereof.

There are currently two OMB-approved application forms for passports, the DS-11 Application for a U.S. Passport (OMB Approval No. 1405-0004) and the DS-82 Application for a U.S. Passport by Mail. Applicants for the proposed passport cards would use the same application forms (DS-11 and DS-82). First time applicants must use the DS-11. The rule would not create any new collection of information requiring OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). It would result in an increase in the number of persons filing the DS-11, and a corresponding increase in the annual reporting and/or record-keeping burden. In conjunction with publication of the final rule, DOS will amend the OMB form 83-I (Paperwork Reduction Act Submission) relating to the DS-11 to reflect these increases.

The collection of information encompassed within this rule has been submitted to the OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

Estimated annual average reporting and/or recordkeeping burden: 14.7 million hours

Estimated annual average number of respondents: 9 million

Estimated average burden per respondent: 1 hour 25 minutes

Estimated frequency of responses: every 10 years (adult passport and passport card applications); every 5 years (minor passport and passport card applications)

Comments on this collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of State, Office of Information and Regulatory Affairs, Washington, DC 20503. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) whether the collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchases of services to provide information.

2. Groups of Children

The collection of information requirements for groups of children would be contained in 8 CFR 212.1 and 235.1. The required information is necessary to comply with section 7209 of IRTPA, as amended, to develop an alternative procedure for groups of children traveling across an international border under adult supervision with parental consent. DHS, in consultation with DOS, has developed alternate procedures requiring

that certain information be provided to CBP so that these children would not be required to present a passport. Consequently, U.S. and Canadian citizen children through age 18, who are traveling with public or private school groups, religious groups, social or cultural organizations, or teams associated with youth sport organizations that arrive at U.S. sea or land ports-of-entry, would be permitted to present a certified copy of a birth certificate (rather than a passport), when the groups are under the supervision of an adult affiliated with the organization and when all the children have parental or legal guardian consent to travel. U.S. citizen children would also be permitted to present a certification of Naturalization or a Consular Report of Birth Abroad.

When crossing the border at the port-of-entry, the U.S. group, organization, or team would be required to provide to CBP on organizational letterhead the following information: (1) the name of the group: (2) the name of each child on the trip; (3) the primary address, primary phone number, date of birth, place of birth, and name of at least one parent or legal guardian for each child on the trip; (4) the name of the chaperone or supervising adult: and (5) the signature of the supervising adult certifying that he or she has obtained parental or legal guardian consent for each child.

The primary purpose for soliciting the information is to allow groups of children arriving at the U.S. border under adult supervision with parental consent to present either an original or a certified copy of a birth certificate, Consular Report of Birth Abroad, or Certificate of Naturalization, rather than a passport, when the requested information is provided to CBP. This information is necessary for CBP to verify that the group of children entering the United States would be eligible for this alternative procedure so that the children would not be required to present a passport.

The collection of information encompassed within this proposed rule has been submitted to the OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

Estimated annual reporting and/or recordkeeping burden: 1,625 hours.

Estimated average annual respondent or recordkeeping burden: 15 minutes.

Estimated number of respondents and/or recordkeepers: 6,500 respondents.

Estimated annual frequency of responses: 6,500 responses.

Comments on this collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) whether the collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility: (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchases of services to provide information.

G. Privacy Statement

A Privacy Impact Assessment (PIA) is being posted to the DHS website in conjunction with the publication of this proposed rule in the **Federal Register**. The changes proposed in this rule involve the removal of an exception for U.S. citizens from having to present a passport in connection with Western Hemisphere travel other than Cuba, such that said individuals would now be required to present a passport or other identified alternative document when traveling from points of origin both within and without of the Western Hemisphere. The rule expands the number of individuals submitting 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, required to provide such information pursuant to the Aviation and Transportation Security Act of 2001 (ATSA) and the Enhanced Border Security and Visa Reform Act of 2002 (EBSA), in the Treasury Enforcement Communications System (TECS) (for which a System of Records Notice is published at 66 FR 53029). By removing the exception for submitting passport information from U.S. Citizens traveling within the Western Hemisphere, DOS and CBP are requiring these individuals to comply with the general requirement to submit passport information when traveling to and from the United States.

LIST OF SUBJECTS

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 235

Administrative practice and procedure. Aliens. Immigration, Reporting and recordkeeping requirements.

22 CFR Part 41

Aliens. Nonimmigrants, Passports and visas.

22 CFR Part 53

Passport Requirement and Exceptions; parameters for U.S. citizen travel and definitions.

PROPOSED AMENDMENTS TO THE REGULATIONS

For the reasons stated above, DHS and DOS propose to amend 8 CFR parts 212 and 235 and 22 CFR parts 41 and 53 as set forth below.

PART 212--DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note. 1102. 1103. 1182 and note. 1184. 1187. 1223. 1225. 1226. 1227. 1359; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108-458. as amended by section 546 of Pub. L. 109-295).

2. A new section 212.0 is added to read as follows:

§ 212.0 Definitions.

For purposes of § 212.1 and § 235.1 of this chapter:

"adjacent islands" means Bermuda and the islands located in the Caribbean Sea, except Cuba.

"cruise ship" means a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories.

"ferry" means any vessel operating on a pre-determined fixed schedule and route, which is being used solely to provide transportation between places that are no more than 300 miles apart and which is being used to transport passengers, vehicles, and/or railroad cars:

"pleasure vessel" means a vessel that is used exclusively for recreational or personal purposes and not to transport passengers or property for hire; and

"United States" means "United States" as defined in § 215(c) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1185(c)).

* * * * *

3. Section 212.1 is amended by:

a. Revising paragraphs (a)(1) and (a)(2); and

b. Revising paragraph (c)(1).

The revisions read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(a) Citizens of Canada or Bermuda, Bahamian nationals or British subjects resident in certain islands.

(1) Canadian citizens. A visa is generally not required for Canadian citizens, except those Canadians that fall under nonimmigrant visa categories E, K, S or

V as provided in paragraphs (h), (l), and (m) of this section and 22 CFR 41.2. A valid unexpired passport is required for Canadian citizens arriving in the United States, except when meeting one of the following requirements:

(i) NEXUS Program. A Canadian citizen who is traveling as a participant in the NEXUS program may present a valid unexpired NEXUS program card when using a NEXUS Air kiosk or when entering the United States from contiguous territory or adjacent islands at a sea or land port-of-entry, and who is not otherwise required to present a passport and visa as provided in paragraphs (h), (l), and (m) of this section and 22 CFR 41.2. A Canadian citizen who enters the United States by pleasure vessel from Canada under the remote inspection system may present a valid unexpired NEXUS program card.

(ii) FAST Program. A Canadian citizen who is traveling as a participant in the FAST program, and who is not otherwise required to present a passport and visa as provided in paragraphs (h), (l), and (m) of this section and 22 CFR 41.2, may present a valid unexpired FAST card at a sea or land port-of-entry prior to entering the United States from contiguous territory or adjacent islands.

(iii) SENTRI Program. A Canadian citizen who is traveling as a participant in the SENTRI program, and who is not otherwise required to present a passport and visa as provided in paragraphs (h), (l), and (m) of this section and 22 CFR 41.2, may present a valid unexpired SENTRI card at a sea or land port-of-entry prior to entering the United States from contiguous territory or adjacent islands.

(iv) Children. A child who is a Canadian citizen arriving from contiguous territory may present for admission to the United States at sea or land ports-of-

entry certain other documents if the arrival meets the requirements described below.

(A) Children Under Age 16

A Canadian citizen who is under the age of 16 is permitted to present an original or certified copy of his or her birth certificate when arriving in the United States from contiguous territory at sea or land ports-of-entry.

(B) Groups of Children Under Age 19

A Canadian citizen, under age 19 who is traveling with a public or private school group, religious group, social or cultural organization, or team associated with a youth sport organization is permitted to present an original or certified copy of his or her birth certificate when arriving in the United States from contiguous territory at sea or land ports-of-entry, when the group, organization or team is under the supervision of an adult affiliated with the organization and when the child has parental or legal guardian consent to travel. For purposes of this paragraph, an adult is considered to be a person who is age 19 or older. The following requirements will apply:

(1) The group, organization, or team must provide to CBP upon crossing the border, on organizational letterhead:

(i) the name of the group, organization or team, and the name of the supervising adult;

(ii) a trip itinerary, including the stated purpose of the trip, the location of the destination, and the length of stay;

(iii) a list of the children on the trip;

(iv) for each child, the primary address, primary phone number, date of birth, place of birth, and name of a parent or legal guardian.

(2) The adult leading the group, organization, or team must demonstrate parental or legal guardian consent by certifying in the writing submitted in subparagraph (1) that he or she has obtained for each child the consent of at least one parent or legal guardian.

(3) The inspection procedure described in this paragraph is limited to members of the group, organization, or team who are under age 19. Other members of the group, organization, or team must comply with other applicable document and/or inspection requirements found in this part or parts 211 or 235 of this subchapter.

(2) Citizens of the British Overseas Territory of Bermuda. A visa is generally not required for Citizens of the British Overseas Territory of Bermuda, except those Bermudians that fall under nonimmigrant visa categories E, K, S or V as provided in paragraphs (h), (l), and (m) of this section and 22 CFR 41.2. A passport is required for Citizens of the British Overseas Territory of Bermuda arriving in the United States.

* * * * *

(c) Mexican nationals. (1) A visa and a passport are not required of a Mexican national who:

(i) Is applying for admission as a temporary visitor for business or pleasure from Mexico at a land port-of-entry, or arriving by pleasure vessel or ferry, if the national is in possession of a Form DSP-150, B-1/B-2 Visa and Border Crossing Card, containing a machine-readable biometric identifier, issued by the Department of State.

* * * * *

(ii) Is applying for admission from contiguous territory or adjacent islands at a sea or land port-of-entry, if the national is a member of the Texas Band of Kickapoo who is in possession of a Form I-872 American Indian Card.

* * * * *

PART 235--INSPECTION OF PERSONS APPLYING FOR ADMISSION

4. The authority citation for part 235 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, published January 2, 2004), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731-32; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108-458, as amended by section 546 of Pub. L. 109-295).

5. Section 235.1 is amended by:

a. Revising paragraph (b); and

b. Revising paragraph (d); and

c. Revising paragraph (e);

The revised text reads as follows:

§ 235.1 Scope of Examination.

* * * * *

(b) U.S. Citizens. A person claiming United States citizenship must establish that fact to the examining officer's satisfaction and must present a passport or alternative documentation as required by 22 CFR part 53. If such applicant for admission fails to satisfy the examining immigration officer that he or she is a citizen, he or she shall thereafter be inspected as an alien.

A United States citizen must present a valid unexpired traditional passport upon entering the United States, unless he or she presents one of the following documents:

(1) Passport Card. A United States citizen who possesses a valid unexpired United States passport card, as defined in 22 CFR 53.1, may present the passport card when entering the United States from Canada, Mexico, the Caribbean or Bermuda at sea or land ports-of-entry.

(2) Merchant Mariner Document. A United States citizen who holds a Merchant Mariner Document (MMD) issued by the U.S. Coast Guard may present an unexpired MMD used in conjunction with official maritime business when entering the United States.

(3) Military Identification. Any U.S. citizen member of the U.S. Armed Forces who is in the uniform of, or bears documents identifying him or her as a member of, such Armed Forces, and who is coming to or departing from the United States under official orders or permit of such Armed Forces, may present a military identification card and the official orders when entering the United States.

(4) Trusted Traveler Programs. A United States citizen who travels as a participant in the NEXUS, FAST or SENTRI programs may present a valid NEXUS

program card when using a NEXUS Air kiosk or a valid NEXUS, FAST, or SENTRI card at a sea or land port-of-entry prior to entering the United States from contiguous territory or adjacent islands. A United States citizen who enters the United States by pleasure vessel from Canada using the remote inspection system may present a NEXUS program card.

(5) Certain Cruise Ship Passengers. A United States citizen traveling entirely within the Western Hemisphere is permitted to present a government-issued photo identification document in combination with either an original or a certified copy of his or her birth certificate, a Consular Report of Birth Abroad issued by the Department of State, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services before entering the United States when the United States citizen:

(i) Boards a cruise ship at a port or place within the United States; and,

(ii) Returns on the same cruise ship to the same United States port or place from where he or she originally departed.

(6) Native American Holders of an American Indian Card. A Native American holder of a Form I-872 American Indian Card arriving from contiguous territory is permitted to present the Form I-872 card prior to entering the United States at a land or sea port-of-entry.

(7) Children. A child who is a United States citizen entering the United States from contiguous territory at a sea or land ports–of-entry may present certain other documents, if the arrival meets the applicable requirements described below.

(i) Children Under Age 16

A United States citizen who is under the age of 16 is permitted to present either an original or a certified copy of his or her birth certificate, a Consular Report of Birth Abroad issued by the Department of State, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services when entering the United States from contiguous territory at sea or land ports-of-entry.

(ii) Groups of Children Under Age 19

A United States citizen, who is under age 19 and is traveling with a public or private school group, religious group, social or cultural organization or team associated with a youth sport organization is permitted to present either an original or a certified copy of his or her birth certificate, a Consular Report of Birth Abroad issued by the Department of State, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services when arriving from contiguous territory at sea or land ports-of-entry, when the group, organization, or team is under the supervision of an adult affiliated with the group, organization, or team and when the child has parental or legal guardian consent to travel. For purposes of this paragraph, an adult is considered to be a person age 19 or older. The following requirements will apply:

(A) The group or organization must provide to CBP upon crossing the border, on organizational letterhead:

(1) the name of the group, organization or team, and the name of the supervising adult;

(2) a list of the children on the trip;

(3) for each child, the primary address, primary phone number, date of birth, place of birth, and name of a parent or legal guardian.

(B) The adult leading the group, organization, or team must demonstrate parental or legal guardian consent by certifying in the writing submitted in subparagraph (A) above that he or she has obtained for each child the consent of at least one parent or legal guardian.

(C) The inspection procedure described in this paragraph is limited to members of the group, organization, or team who are under age 19. Other members of the group, organization, or team must comply with other applicable document and/or inspection requirements found in this part.

* * * * *

(d) Pilot Programs; alternate requirements. For purposes of conducting a test program or procedure designed to evaluate the effectiveness of technology or operational procedures regarding the suitability of travel documents that denote citizenship and identity, the Secretary of Homeland Security may enter into a voluntary pilot program agreement with a state, tribe, province, territory, or foreign government. The Secretary of Homeland Security may, by publication of a notice in the **Federal Register**, designate as an acceptable document for travel into the United States from elsewhere in the Western Hemisphere, on a temporary basis, a valid and lawfully obtained document from a state,

tribe, province, territory, or foreign government developed in accordance with a voluntary pilot program agreement between that entity and the Department of Homeland Security. If a pilot program document is announced in such a notice, United States citizens or foreign nationals may present these accepted pilot program documents in lieu of a passport upon entering or seeking admission to the United States according to the terms announced in the pilot program agreements. A list of such programs and documents are available on the Customs and Border Protection website.

* * * * *

22 C.F.R. PART 41 – VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT

Subpart A – PASSPORT AND VISAS NOT REQUIRED FOR CERTAIN NONIMMIGRANTS

1. The authority citation for part 41 is revised to read as follows:

   Authority: 8 U.S.C. 1104; Pub. L. 105-277, 112 Stat. 2681-795 through 2681-801; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108-458, as amended by section 546 of Pub. L. 109-295).

2. A new section 41.0 is added to read as follows:

§ 41.0 Definitions.

For purposes of this chapter:

"adjacent islands" means Bermuda and the islands located in the Caribbean Sea, except Cuba.

"cruise ship" means a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours any part of which is

on the high seas, and for which passengers are embarked or disembarked in the United States or its territories.

"ferry" means any vessel operating on a pre-determined fixed schedule and route, which is being used solely to provide transportation between places that are no more than 300 miles apart and which is being used to transport passengers, vehicles, and/or railroad cars;

"pleasure vessel" means a vessel that is used exclusively for recreational or personal purposes and not to transport passengers or property for hire; and

"United States" means "United States" as defined in § 215(c) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1185(c)).

* * * * *

3. Section 41.1 is amended by deleting paragraph (b) and reserving that paragraph for future use.

* * * * *

4. Section 41.2 is amended by revising paragraphs (a), (b), and (g)(1) and adding a paragraph (g)(5) to read as follows:

§ 41.2 Exemption or Waiver by Secretary of State and Secretary of Homeland Security of passport and/or visa requirements for certain categories of nonimmigrants.

Pursuant to the authority of the Secretary of State and the Secretary of Homeland Security under INA as amended a passport and/or visa is not required for the following categories of nonimmigrants:

(a) Canadian citizens. A visa is not required for an American Indian born in Canada having at least 50 percentum of blood of the American Indian race. A visa is not required

for other Canadian citizens except for those who apply for admission in E, K, V, or S nonimmigrant classification as provided in paragraphs (k) and (m) of this section and 8 CFR 212.1. A passport is required for Canadian citizens applying for admission to the United States, except when one of the following exceptions applies:

(i) *NEXUS Program.* A Canadian citizen who is traveling as a participant in the NEXUS program may present a valid NEXUS program card when using a NEXUS Air kiosk or when entering the United States from contiguous territory or adjacent islands at a land or sea port-of-entry, and who is not otherwise required to present a passport and visa as provided in paragraphs (k) and (m) of this section and 8 CFR 212.1. A Canadian citizen who enters the United States by pleasure vessel from Canada under the remote inspection system may present a NEXUS program card.

(ii) *FAST Program.* A Canadian citizen who is traveling as a participant in the FAST program, and who is not otherwise required to present a passport and visa as provided in paragraphs (k) and (m) of this section and 8 CFR 212.1, may present a valid FAST card at a sea or land port-of-entry prior to entering the United States from contiguous territory or adjacent islands.

(iii) *SENTRI Program.* A Canadian citizen who is traveling as a participant in the SENTRI program, and who is not otherwise required to present a passport and visa as provided in paragraphs (k) and (m) of this section and 8 CFR 212.1, may present a valid SENTRI card at a sea or land port-of-entry prior to entering the United States from contiguous territory or adjacent islands.

(iv) *Children.* A child who is a Canadian citizen who is seeking admission to the United States when arriving from contiguous territory at a sea or land port-of-entry, may present certain other documents if the arrival meets the applicable requirements described below.

(A) Children Under Age 16

A Canadian citizen who is under the age of 16 is permitted to present an original or certified copy of his or her birth certificate when arriving in the United States from contiguous territory at sea or land ports-of-entry.

(B) Groups of Children Under Age 19

A Canadian citizen who is under age 19 and who is traveling with a public or private school group, religious group, social or cultural organization, or team associated with a youth sport organization may present an original or certified copy of his or her birth certificate when applying for admission to the United States from contiguous territory at all sea and land ports-of-entry, when the group, organization or team is under the supervision of an adult affiliated with the organization and when the child has parental or legal guardian consent to travel. For purposes of this paragraph, an adult is considered to be a person who is age 19 or older. The following requirements will apply:

(1) The group, organization, or team must provide to CBP upon crossing the border, on organizational letterhead:

(i) The name of the group, organization or team, and the name of the supervising adult;

(ii) A trip itinerary, including the stated purpose of the trip, the location of the destination, and the length of stay;

(iii) A list of the children on the trip;

(iv) for each child, the primary address, primary phone number, date of birth, place of birth, and the name of at least one parent or legal guardian.

(2) The adult leading the group, organization, or team must demonstrate parental or legal guardian consent by certifying in the writing submitted in subparagraph (1) that he or she has obtained for each child the consent of at least one parent or legal guardian.

(3) The procedure described in this paragraph is limited to members of the group, organization, or team that are under age 19. Other members of the group, organization, or team must comply with other applicable document and/or inspection requirements found in this part and 8 CFR parts 212 and 235.

(v) *Pilot Programs.* A Canadian citizen who is traveling as a participant in a pilot program approved by the Secretary of Homeland Security pursuant to 8 CFR 235.1(d) may present an acceptable alternative document specified for that pilot program when entering the United States

from contiguous territory or adjacent islands at a land or sea port-of-entry. and who is not otherwise required to present a passport and visa as provided in paragraphs (k) and (m) of this section and 8 CFR 212.1. A Canadian citizen who enters the United States by pleasure vessel from Canada under the remote inspection system may also present an acceptable pilot program document if the Canadian citizen is participating in a pilot program which specifically provides that the acceptable pilot program document may be presented for remote entry.

* * * * *

(b) Citizens of the British Overseas Territory of Bermuda. A visa is not required, except for Citizens of the British Overseas Territory of Bermuda who apply for admission in E, K, V, or S nonimmigrant visa classification as provided in paragraphs (k) and (m) of this section and 8 CFR 212.1. A passport is required for Citizens of the British Overseas Territory of Bermuda applying for admission to the United States.

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(g) Mexican nationals. (1) A visa and a passport are not required of a Mexican national who is applying for admission from Mexico as a temporary visitor for business or pleasure at a land port-of-entry, or arriving by pleasure vessel or ferry, if the national is in possession of a Form DSP-150, B-1/B-2 Visa and Border Crossing Card, containing a machine-readable biometric identifier, issued by the Department of State.

* * * * *

(5) A visa and a passport are not required of a Mexican national who is applying for admission from contiguous territory or adjacent islands at a land or sea port-of-entry,

if the national is a member of the Texas Band of Kickapoo who is in possession of a Form I-872 American Indian Card issued by U.S. Citizenship and Immigration Services (USCIS).

* * * * *

22 C.F.R. PART 53 – PASSPORT REQUIREMENT AND EXCEPTIONS

Section 53.2 is amended by:

1) Revising section (a);

2) Revising section (b);

3) Revising section (c);

4) Deleting sections (d) – (i), and incorporating them in new section (b).

The addition and revisions read as follows:

§ 53.2 Exceptions.

(a) U.S. citizens are not required to bear U.S. passports when traveling directly between parts of the United States as defined in § 50.1 of this chapter.

(b) A U.S. citizen is not required to bear a valid U.S. passport to enter or depart the United States:

(1) When traveling as a member of the Armed Forces of the United States on active duty and when he or she is in the uniform of, or bears documents identifying him or her as a member of, such Armed Forces, when under official orders or permit of such Armed Forces, and when carrying a military identification card; or

(2) When traveling entirely within the Western Hemisphere on a cruise ship, when the U.S. citizen boards the cruise ship at a port or place within the United States, and, returns on the same cruise ship to the same United States port or place from where

he or she originally departed. That U.S. citizen may present a government-issued photo identification document in combination with either an original or a certified copy of his or her birth certificate, a Consular Report of Birth Abroad issued by the Department, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services before entering the United States; or

(3) When traveling as a U.S. citizen seaman, carrying an unexpired Merchant Marine Document (MMD) in conjunction with maritime business. The MMD is not sufficient to establish citizenship for purposes of issuance of a United States passport under part 51 of this chapter; or

(4) Trusted Traveler Programs. (i) *NEXUS Program.* When traveling as a participant in the NEXUS program, he or she may present a valid NEXUS program card when using a NEXUS Air kiosk or when entering the United States from contiguous territory or adjacent islands at a sea or land port-of-entry. A U.S. citizen who enters the United States by pleasure vessel from Canada under the remote inspection system may also present a NEXUS program card;

(ii) *FAST Program.* A U.S. citizen who is traveling as a participant in the FAST program may present a valid FAST card when entering the United States from contiguous territory or adjacent islands at a sea or land port-of-entry;

(iii) *SENTRI Program.* A U.S. citizen who is traveling as a participant in the SENTRI program may present a valid SENTRI card when entering the United States from contiguous territory or adjacent islands at a sea or land port-of-entry;

(iv) The NEXUS, FAST, and SENTRI cards are not sufficient to establish citizenship for purposes of issuance of a U.S. passport under part 51 of this chapter; or

(5) When arriving at land ports of entry and sea ports of entry from contiguous territory or adjacent islands, Native American holders of American Indian Cards (Form I-872) issued by United States Citizenship and Immigration Services (USCIS) may present those cards.

(6) When bearing documents or combinations of documents the Secretary of Homeland Security has determined under Section 7209(b) of Pub. L. 108-458 (8 U.S.C. 1185 note) are sufficient to denote identity and citizenship.

(7) When the U.S. citizen is employed directly or indirectly on the construction, operation, or maintenance of works undertaken in accordance with the treaty concluded on February 3, 1944, between the United States and Mexico regarding the functions of the International Boundary and Water Commission (IBWC), TS 994, 9 Bevans 1166, 59 Stat. 1219, or other related agreements, provided that the U.S. citizen bears an official identification card issued by the IBWC and is traveling in connection with such employment; or

(8) When the Department of State waives, pursuant to EO 13323 of December 30, 2003, Sec 2, the requirement with respect to the U.S. citizen because there is an unforeseen emergency; or

(9) When the Department of State waives, pursuant to EO 13323 of December 30, 2003, Sec 2, the requirement with respect to the U.S. citizen for humanitarian or national interest reasons.

(10) When the U.S. citizen is a child under the age of 19 arriving from contiguous territory in the following circumstances:

(i) Children Under Age 16

A United States citizen who is under the age of 16 is permitted to present either an original or a certified copy of his or her birth certificate, a Consular Report of Birth Abroad, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services when entering the United States from contiguous territory at sea or land ports-of-entry.

(ii) Groups of Children Under Age 19

A U.S. citizen who is under age 19 and who is traveling with a public or private school group, religious group, social or cultural organization, or team associated with a youth sport organization may present either an original or certified copy of his or her birth certificate, a Consular Report of Birth Abroad, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services when arriving in the United States from contiguous territory at all land or sea ports of entry, when the group, organization or team is under the supervision of an adult affiliated with the organization and when the child has parental or legal guardian consent to travel. For purposes of this paragraph, an adult is considered to be a person who is age 19 or older. The following requirements will apply:

(A) The group, organization, or team must provide to CBP upon crossing the border on organizational letterhead:

(1) the name of the group, organization or team, and the name of the supervising adult:

(2) a list of the children on the trip; and

(3) for each child, the primary address, primary phone number, date of birth, place of birth, and the name of at least one parent or legal guardian.

(B) The adult leading the group, organization, or team must demonstrate parental or legal guardian consent by providing certifying in the writing submitted in subparagraph (A) above that he or she has obtained for each child the consent of at least one parent or legal guardian.

(C) The procedure described in this paragraph is limited to members of the group, organization, or team who are under age 19. Other members of the group, organization, or team must comply with other applicable document and/or inspection requirements found in 8 CFR parts 211, 212 or 235.

* * * * *

Date:

Michael Chertoff
Secretary of Homeland Security
Department of Homeland Security

Date:

Henrietta Fore
Under Secretary of State for Management
Department of State

(C) The procedure described in this paragraph is limited to members of the group, organization, or team who are under age 19. Other members of the group, organization, or team must comply with other applicable document and/or inspection requirements found in 8 CFR parts 211, 212 or 235.

* * * * *

Date:

Michael Chertoff
Secretary of Homeland Security
Department of Homeland Security

Date: June 19, 2007

Henrietta Fore
Under Secretary of State for Management
Department of State

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