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May 25, 2006

The Honorable Loretta Sanchez  
Ranking Minority Member  
Subcommittee on Economic Security,  
Infrastructure Protection, and Cybersecurity  
Committee on Homeland Security  
House of Representatives

The Honorable Louise M. Slaughter  
The Honorable John M. McHugh  
House of Representatives

Subject: *Observations on Efforts to Implement the Western Hemisphere Travel Initiative on the U.S. Border with Canada*

Securing the U.S. border has received increasing attention since the terrorist attacks of September 11, 2001. For years, U.S. and Canadian citizens have crossed the northern border using documents such as driver's licenses or birth certificates or in some cases without showing any documentation. Border crossings are commonplace; in 2005, for example, an estimated 13 million U.S. citizens crossed the northern border. In the heightened national security environment after September 11, we have previously reported that documents like driver's licenses and birth certificates can easily be obtained, altered, or counterfeited and used by terrorists to travel into and out of the country.<sup>1</sup> The Intelligence Reform and Terrorism Prevention Act of 2004 requires the Secretary of Homeland Security, in consultation with the Secretary of State, to develop and implement a plan that requires a passport or other document or combination of documents that the Secretary of Homeland Security deems sufficient to show identity and citizenship for U.S. citizens and citizens of Bermuda, Canada, and Mexico when entering the United States from certain countries in North, Central, or South America.<sup>2</sup> The act requires the Department of Homeland Security (DHS) and the Department of State (State) to implement this requirement by January 2008, and the effort to do so is called the Western Hemisphere Travel Initiative (Travel Initiative).

While requiring passports for all border crossings would meet the requirements of the law, the possibility that DHS and State would do so has been highly controversial, and it centers attention on the difficult task of improving border security while still

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<sup>1</sup>GAO, *Counterfeit Documents Used to Enter the United States from Certain Western Hemisphere Countries Not Detected*, GAO-03-713T (Washington, D.C.: May 13, 2003).

<sup>2</sup>Pub. L. No. 108-458, § 7209, 118 Stat. 3638, 3823 (2004).

facilitating commerce and travel. Members of Congress, officials from state and local governments, officials from the Canadian government, and representatives of the business community have expressed concern about the Travel Initiative, particularly as it relates to the cost of purchasing passports for families and the possible impact on cross-border tourism at the northern border.<sup>3</sup> For example, it would cost an American family of four over \$350 to purchase passports to return to the United States after making a trip or multiple trips to Canada or elsewhere. Many fear the cost of passports will discourage unplanned or spontaneous travel, especially among those who cross the border to shop or dine or take a last-minute weekend trip. DHS and State have responded to these concerns by proposing a People Access Security Service (PASS) card that may cost less than a passport.<sup>4</sup> The proposed card would be an alternative form of a passport for U.S. citizens who cross the border by land, and it would demonstrate both citizenship and identity. Meanwhile, various other alternatives have been proposed or suggested as ways to meet the Travel Initiative. One proposal, for example, would continue or make greater use of existing frequent traveler programs.<sup>5</sup> These programs prescreen travelers to help speed their entrance into Canada and the United States and are a required component of the Travel Initiative under the Intelligence Reform and Terrorism Prevention Act.<sup>6</sup> Other proposals include the use of driver's licenses with enhanced security features and a day pass—a document that could facilitate travel for individuals who take infrequent or spontaneous trips across the border.

As the statutory deadline for implementing DHS's and State's plans draws closer, questions have arisen about the agencies' progress in carrying out the Travel Initiative. As part of our examination of the Travel Initiative, you asked us to provide a status report on the progress these agencies have made. On April 7, 2006, we briefed your office on our observations to date, which focused primarily on implementation along the northern border. This letter summarizes the information we provided you at that briefing. It addresses the following questions:

- What steps have been taken and what challenges remain in implementing the Travel Initiative by the statutory deadline of January 2008?
- What challenges have been identified with alternative documents or programs that have been suggested as substitutes for passports or PASS cards under the Travel Initiative?

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<sup>3</sup>A study commissioned by State estimated that 26 percent of the eligible citizen population in the United States have passports. *A Study to Determine the Inaugural and Annual Demand for U.S. Passports by U.S. Citizens Living In and Traveling to Canada, Mexico, and the Caribbean; Phase Four: U.S. Land Border Passport Demand Survey*, prepared for the Passport Services Office, Bureau of Consular Affairs, U.S. Department of State, by BearingPoint (October, 2005)

<sup>4</sup>According to State, it is also examining the cost of a passport to see whether it can be reduced.

<sup>5</sup>The United States and Canada operate two frequent traveler programs: NEXUS and FAST. NEXUS is for commuters who live in border communities who frequently travel back and forth across the border. FAST is for truck companies and their drivers who transport goods across the border.

<sup>6</sup>The act requires DHS and State to seek to expedite the travel of frequent travelers, including those who reside in border communities, and that, in doing so, they make readily available a registered traveler program.

To do our work, we interviewed DHS and State officials in Washington, D.C.; reviewed relevant laws and regulations; and examined documents and reports about the Travel Initiative and proposals for alternative documents and programs. We also interviewed DHS and State officials about existing border crossing programs, reviewed available documentation about these programs, and met with various local stakeholders in New York and Washington states to discuss their views about the Travel Initiative. We focused our initial work on the U.S.-Canadian border because the vast majority of concerns expressed about the Travel Initiative are from communities and states that border Canada. Our observations are based on the challenges faced by existing frequent traveler and other border-crossing programs as well as on our understanding of how the Travel Initiative is likely to be structured. Our work was conducted between January 2006 and May 2006 in accordance with generally accepted government auditing standards. Appendix I discusses our scope and methodology in more detail.

## Results

DHS and State are within 20 months of the January 2008 deadline for implementing the Travel Initiative, and while the agencies have taken initial steps to carry out the program, broad and extensive challenges remain. The steps taken and the challenges that remain fall into five main areas: (1) making a decision about what documents individuals will need when they enter the United States, (2) resolving technical and programmatic issues related to PASS cards, (3) proceeding through the rule-making process, (4) carrying out a cost-benefit study, and (5) managing implementation of the program. Achieving the intended security benefits of the Travel Initiative by the statutory milestone date, without simply requiring all travelers to carry a passport, appears in jeopardy, given the volume of work that remains. Here is a summary of steps taken and the challenges that remain.

- Documentary requirements: DHS still needs to decide what alternative documents, if any, will be acceptable in lieu of a passport when U.S. citizens and citizens of Canada enter or return to the United States—and, in some cases, what documentation individuals will have to present in order to obtain them. DHS and State have taken steps to propose or examine an alternative form of a passport, called a PASS card, or alternatives to a passport, such as frequent traveler programs and day passes, but final decisions are still in process. Determining documentary requirements is key to making decisions on how DHS inspects individuals entering or returning to the United States from Canada. Also, these decisions are the first steps needed to make progress toward meeting the mandate.
- Implementing PASS cards: If DHS and State elect to proceed with a PASS card as an alternative form of a passport for U.S. citizens crossing land borders, they will still need to make key decisions about it. For example, DHS and State

have taken steps to identify the PASS card as a lower-cost alternative form of a passport, and they have had extensive discussions on which type of technology to use in a PASS card, but the issue remains unresolved.<sup>7</sup> One type of technology allows the cards to be read by equipment that is as much as 30 feet away. For example, existing frequent traveler programs at land ports use this technology. A second type of technology requires the card to be read from close proximity. Deciding on a technology involves a broad set of considerations that include (1) utilizing security features to protect personal information, (2) ensuring that proper equipment and facilities are in place to facilitate crossings at land borders, and (3) enhancing compatibility with other border-crossing technology currently in use. Whatever technology is chosen, designing, developing, testing, and evaluating the card and reader system will take time. Once the cards and equipment are deemed suitable, DHS and State will need to develop and implement operating procedures and policies to issue and inspect the cards. Installation time for the reader equipment will also need to be factored in, if the PASS card option is implemented.<sup>8</sup> For example, not all land ports of entry currently have equipment to read documents, and existing equipment may not be compatible with the approach chosen. Other decisions on the PASS card that remain open include the cost of the card and equipment and whether the card will replace cards used in frequent traveler programs.<sup>9</sup>

- **Rule-making process:** To implement the Travel Initiative, DHS and State plan to issue three rules to establish (1) the documentary requirements for travel by air and sea, (2) the requirements for using a PASS card, and (3) the documentary requirements for travel by land.<sup>10</sup> Although DHS and State are not required to implement the law until January 2008, they have set an interim goal of implementing the rule for air and sea travelers a year early, or by January 2007, as part of the strategy to implement all three rules by the 2008 deadline. This interim goal appears in jeopardy since DHS and State have yet to submit the rule to the Office of Management and Budget (OMB) for review and to the public for comment—both of which, along with the process of responding to comments received and modifying the rule as needed, can take up to 8 months or more to complete.<sup>11</sup> Adding pressure to the schedule is the fact that the regulation is generally issued at least 2 months before it takes effect. DHS and State face no legal requirement to meet this self-imposed early deadline for the first rule, but being unable to do so will mean that more work will shift into the 1 year that remains. According to officials at State, the rule for air and sea has been drafted and is now in the final clearance process at DHS.

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<sup>7</sup>The technology that DHS and State are considering is called radio frequency identification (RFID). RFID is an automated data-capture technology that can be used to electronically identify, track, and store information contained on a tag. Identification and tracking capabilities are provided using wireless communication to transmit data. Current RFID applications include building access badges, highway toll collection, and supply chain management.

<sup>8</sup>While the Intelligence Reform and Terrorism Prevention Act of 2004 addresses documentary requirements for certain cross-border travelers, it is silent on whether such documents should be read electronically.

<sup>9</sup>According to officials at State, the department will issue and adjudicate the PASS card in the same way as traditional passports.

<sup>10</sup>In September 2005, DHS and State issued an advance notice of proposed rule making that invited the public to provide comments on possible means of implementing the Travel Initiative, including comments on documents other than passports that should be accepted.

<sup>11</sup>See appendix II for a more detailed description of the steps and potential time frames involved in the rule-making process.

- Cost-benefit study: One requirement of the rule-making process is that any decision on an approach must be preceded by a comprehensive and publicly disclosed cost-benefit study when the economic impact may be \$100 million or more in any single year.<sup>12</sup> This requirement could apply to decisions about documentation for crossing the border.<sup>13</sup> DHS is in the early stages of studying costs and benefits, but much more work will be needed. For example, examining the costs of the new rules could involve studies of the extent to which the Travel Initiative discourages tourism and commerce by increasing the cost of acquiring needed documentation and by possibly creating delays at the border. In addition, policy guidance calls on agencies to analyze alternative actions, such as the use of frequent traveler programs, and to examine expected benefits, such as the expected reduction in lives lost, property damage, and disruptions to the economy as a result of reducing the likelihood of a terrorist attack. The requirement to include the Mexican border in the study further expands the scope and the work involved. Completing the study is dependent, in part, on knowing what kind of card and technology that DHS and State are likely to use—a decision that remains open. Appendix III provides more details on cost-benefit and other analytic requirements.
- Managing implementation: Once decisions are made on what documents will be needed, DHS and State will face challenges in program implementation and management. Major challenges remain in developing (1) an implementation plan, (2) budget estimates, (3) awareness programs for the public, (4) training programs for DHS staff, (5) bilateral coordination with Canada, and (6) a common understanding of how the Travel Initiative links to the overall strategy for securing the nation's borders. Falling short in any of these areas may hinder the ability of the agencies to achieve their goal of improving security while facilitating commerce and tourism. According to DHS officials, they have formed working groups to take action in each of these areas, but much more work remains in developing plans and approaches that improve the likelihood of program success. For example, DHS did not request funds for fiscal year 2007 to implement the Travel Initiative, and it remains unclear what funds DHS will need to install equipment or infrastructure to support the use of a PASS card by January 2008, if PASS is chosen. In contrast, State has developed and begun implementing plans for processing more passports in preparation for the Travel Initiative, and it has requested funds for fiscal year 2007 to do so. For example, it has hired more staff to adjudicate an increase in passport demand. In addition, State and DHS have been involved in numerous

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<sup>12</sup> Executive Order 12866—Regulatory Planning and Review—states that for any regulation that may result in an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities, an agency must develop and submit a cost benefit analysis to OMB and make it available to the public after publication of the proposed regulation in the *Federal Register*. While agencies must conduct an assessment of the potential costs and benefits for any rule deemed to be significant under the executive order, this more rigorous requirement is triggered by the \$100 million threshold.

<sup>13</sup> A study commissioned by State estimated that 6.8 million, or about 51 percent, of all U.S. citizens who visited Canada in 2005 did not possess a passport. If 2 million of these individuals purchased a PASS card for \$50 in any single year, the Travel Initiative would meet the \$100 million threshold. *A Study to Determine the Inaugural and Annual Demand for U.S. Passports by U.S. Citizens Living In and Traveling to Canada, Mexico, and the Caribbean; Phase Four: U.S. Land Border Passport Demand Survey*, prepared for the Passport Services Office, Bureau of Consular Affairs, U.S. Department of State, by BearingPoint (October, 2005).

outreach efforts to members of Congress and stakeholders in northern border communities, but much more remains to be done once key decisions are made on the program.

The various alternative documents or programs proposed by federal agencies, the business community, and others as substitutes for a U.S. passport or PASS card all present major challenges as well. The suggested alternatives fall into three main categories: (1) frequent traveler programs, (2) driver's licenses with enhanced security features and the capacity to denote citizenship, and (3) day passes. Appendix IV offers more details on these alternatives. Below we discuss the major challenges for each of these alternatives.

- Frequent traveler programs for land crossings: Participants in these programs are required to undergo an application process that includes providing fingerprints, undergoing an interview with a DHS or Canadian officer, submitting evidence of citizenship and identity, and taking a digital photograph. The cards issued to participants show citizenship and identity and, according to DHS, are expected to meet the requirements of the Travel Initiative, including the requirement that DHS and State make readily available a registered traveler program. Furthermore, they would provide Canadian citizens with an alternative to a passport for entering the United States. While DHS could involve more U.S. and Canadian citizens who frequently cross the border in these programs, these documents may not be useful as alternatives to a passport for all travelers because (1) millions of U.S. and Canadian citizens who cross the northern border do so only once a year or once every several years and they may not want to incur the cost of a card, and (2) for the vast majority of individuals seeking to cross the border, application and processing times and requirements could be as extensive as for passports.<sup>14</sup> In addition, several management and policy decisions would need to be made in order to make using frequent traveler programs a viable alternative under the Travel Initiative, including identifying the requirements for making these cards official travel documents and determining how to make the application process accessible to all citizens. DHS and State currently do not view these cards as official travel documents.
- Driver's licenses with enhanced security features: A number of stakeholders are advocating a driver's license with enhanced security features as a substitute for a passport. They maintain that when states adopt driver's licenses with enhanced security features in accordance with the REAL ID Act, the document should be sufficient for land border crossings under the Travel Initiative.<sup>15</sup> However, the new driver's licenses will not show citizenship and therefore would not by themselves meet the legal requirements of the Travel

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<sup>14</sup>Currently, less than 1 percent of U.S. citizens who cross the northern border are participants in frequent traveler programs.

<sup>15</sup>In May 2005, Congress passed legislation—known as the REAL ID Act of 2005 (Pub. L. No. 109-13, §§ 201-207, 119 Stat. 302, 311-316)—that requires states that want their driver's licenses to be accepted for official federal purposes to adopt standard practices for adding enhanced security features in driver's licenses by May 2008.

Initiative. Congress most likely would have to give states the statutory authority to determine citizenship and display it on driver's licenses or establish a process for the federal government to determine the citizenship status of driver's license applicants and provide this information to state authorities.<sup>16</sup> This approach also would not enable Canadians to continue to enter the United States with a driver's license because Canadian driver's licenses would not be subject to any new enhanced security and citizenship requirements imposed in the United States.

- **Day passes:**<sup>17</sup> This alternative would likely involve having U.S. citizens fill out a pass application on the U.S. side of the border and show the pass upon their return to the United States. It could provide travelers with an option to cross the border without obtaining a passport and without making travel plans in advance. DHS has not decided whether a day pass would cover documentary requirements for Canadian citizens wanting to cross the border. However, there are many operational issues to consider, including (1) the process that DHS would use to verify a person's identity and citizenship to obtain the pass; (2) the security features needed to be included on the day pass to prevent fraud and counterfeiting; (3) the additional facilities, infrastructure, and staff needed to issue a day pass; and (4) the training staff will need to process day pass requests. For example, U.S. facilities at popular border crossings would need the necessary space and personnel to accommodate and process the people who would need to stop, fill out their application forms, and have their documentation verified. This would take time and individuals may not view a day trip as worth the time it could take to obtain a pass.

## Concluding Observations

DHS and State have taken some steps to carry out the Travel Initiative. However, they have a long way to go to implement their proposed plans, and the time to get the job done is slipping by. The many challenges that they face mirror the complexities and the nuances involved in developing a border security program that is a major cultural change in the way that individuals and commerce cross the U.S.-Canadian border. There are no easy alternatives to a passport or a PASS card that meet the legal requirement to show identity and citizenship. Alternative programs or documents, such as frequent traveler programs and driver's licenses with enhanced security features, have their own set of challenges, and using them in lieu of a passport will not easily resolve the management issues faced by DHS and State. These conditions, coupled with the significant cross-border commerce and tourism, heighten the need to take care in planning, evaluating, testing, and implementing an approach that ultimately improves security at the northern border without adversely affecting

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<sup>16</sup>The REAL ID Act does not specifically allow or require states to show citizenship on driver's licenses. A driver's license with citizenship information on it could be controversial if it were perceived as a national identification card since concerns have been raised about such cards in regards to individuals' privacy and freedom to travel.

<sup>17</sup>Unlike frequent traveler programs that DHS has operated for several years, the proposal to use a day pass has recently surfaced, and it is in the very early stages of consideration.

commerce and tourism in a significant way. Attempting to address these challenges under what appears to be an ambitious schedule adds uncertainty and risk.

### **Agency Comments and Our Evaluation**

We provided a draft of this report to DHS and State for comment. DHS did not have official comments on our draft, but did provide technical comments which we incorporated in this report where appropriate.

In its official comments, State generally agreed with the challenges we described in the draft report, but expressed concern that our concluding observations did not adequately recognize various steps it had taken to carry out the program. State provided examples of actions it had taken in several areas, such as proceeding with the rulemaking process, estimating the increase in passport demand, developing the PASS card, examining the cost of a passport, and carrying out an outreach effort to members of Congress and the public. We revised the report where appropriate to recognize the steps taken by State in these areas. These steps notwithstanding, we continue to believe that the work remaining for both DHS and State, the complexities and nuances involved, and the time required to complete the implementation steps present a challenge for the agencies to meet the statutory deadline. State's official comments are reprinted in appendix V.

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As arranged with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after its issue date. At that time, we will send copies of this report to interested congressional committees and subcommittees. We will also make copies available to others on request. In addition, this report will be available at no charge on GAO's Web site at <http://www.gao.gov>.



If you or your staff have any questions about this report or wish to discuss the matter further, please contact me at (202) 512-8777 or stanar@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Other key contributors to this report were John Mortin, Assistant Director, Neil Asaba, Chuck Bausell, Frances Cook, Richard Hung, Sara Margraf, Amanda Miller.

A handwritten signature in black ink that reads "Richard M. Stana". The signature is written in a cursive style with a prominent initial 'R'.

Richard M. Stana  
Director, Homeland Security and Justice Issues

## Appendix I

### Scope and Methodology

While the Travel Initiative applies to citizens of Bermuda, Canada, and Mexico entering the United States from certain countries in North, Central and South America, we focused our initial work on the U.S.-Canadian border because the vast majority of concerns expressed about the Travel Initiative were from communities and states that border Canada. To determine what steps have been taken and what challenges remain, we reviewed several announcements by DHS and State on their plans and schedule for carrying out the initiative. At DHS and State headquarters, we met with program officials in charge of carrying out the Travel Initiative and talked to them about the current status of the program. We also reviewed key procedures for carrying out cost-benefit studies, and we discussed the process for issuing new regulations with DHS lawyers involved in the rule-making process. We also reviewed reports on border security with Canada. As part of our work, we met with local stakeholders, such as officials from the Bellingham/Whatcom County Chamber of Commerce (Washington) and the Buffalo Niagara Partnership (New York), who have expressed concern to members of Congress regarding the initiative and the economic impact it might have on northern border communities. We reviewed pertinent laws and regulations related to the Travel Initiative and other documents provided by DHS and State. Our ability to analyze these challenges was limited because key decisions about the program have not yet been made. To determine what challenges have been identified with alternative travel documents or programs that have been suggested as substitutes for passports or PASS cards under the Travel Initiative, we reviewed program documents on frequent traveler programs, such as NEXUS—a DHS program for commuters who live in border communities who frequently travel back and forth across the border—and FAST—a program for truck companies and their drivers who transport goods and commerce across the border. We selected and visited ports of entry in Blaine, Washington, and Buffalo, New York, because of their geographic location and because each has NEXUS and FAST facilities. We also visited Alexandria Bay, New York, because of its proximity to Buffalo, New York. At all three locations, we met with staff in charge of border-crossing programs to gain a better understanding of border-crossing procedures, infrastructure, and technology. Our work was conducted between January 2006 and May 2006 in accordance with generally accepted government auditing standards.

## Appendix II

### General Overview of the Federal Rule-Making Process

This appendix provides an overview of the steps in the rule-making process for a significant regulatory action under Executive Order 12866 and the potential time involved for some of the steps.

Step 1: Agency (or agencies, if a joint rule) completes development of the notice of proposed rule making (NPRM), which includes the proposed rule and supplemental information.<sup>18</sup>

Step 2: Agency submits the draft NPRM and supporting materials, including any required cost-benefit analysis, to the Office of Management and Budget (OMB) for review.

Step 3: OMB reviews the draft NPRM and supporting materials and coordinates review of the proposed rule by any other agencies that may have an interest in it.

Step 4: OMB notifies the agency in writing of the results of its review, including any provisions requiring further consideration by the agency, within 90 calendar days after the date of submission to OMB.<sup>19</sup>

Step 5: OMB resolves disagreements or conflicts, if any, between or among agency heads or between OMB and any agency; if it cannot do so, such disagreements or conflicts are resolved by the President or by the Vice President acting at the request of the President.

Step 6: Once OMB notifies the agency that it has completed its review without any requests for further consideration, the agency reviews the NPRM and publishes it for public comment in the *Federal Register*.

Step 7: Agency is to give the public a meaningful opportunity to comment on the proposed rule, which generally means a comment period of not less than 60 days.

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<sup>18</sup> An agency may also begin this process with an advance notice of proposed rule making that seeks comments and suggestions from the public on the potential content of a forthcoming NPRM, but this step is not required by law or executive order in most cases.

<sup>19</sup> Executive Order 12866 provides that, for rules governed by a statutory deadline, the agency shall, to the extent practicable, schedule rule-making proceedings so as to permit sufficient time for OMB review. It also provides that when an agency is obligated by law to act more quickly than normal review procedures allow, the agency shall comply with the requirements to submit the proposed rule and required supporting materials to OMB, "to the extent practicable."

## Appendix II

Step 8: Once the comment period has closed, the agency reviews the comments received, makes appropriate revisions to the proposed rule, and prepares a notice of the final rule, including supplemental information with responses to comments received.<sup>20</sup>

Step 9: Agency submits draft notice and final rule, including updated supporting materials or cost-benefit analysis, to OMB for review.

Step 10: OMB reviews the draft notice, final rule, and supporting materials; coordinates review by any other agencies that may have an interest in the rule; and notifies the agency of the results within 90 calendar days after the date of submission to OMB.<sup>21</sup>

Step 11: Once OMB notifies the agency that it has completed its review without any requests for further consideration, the agency reviews the rule one more time and generally publishes the final rule and supplemental information in the *Federal Register* at least 60 days before the new rule takes effect.

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<sup>20</sup>If the final rule is materially different from the proposed rule, possibly because of new issues raised or other important legal or substantive developments during the comment period, an agency may decide to publish it as a proposed rule instead with a second comment period. This approach helps the agency provide sufficient notice and opportunity for public comment on how the rule addresses the new issues or developments, but it delays implementation of the final rule.

<sup>21</sup>This time period is reduced to 45 days if OMB has previously reviewed the rule and supporting information and there has been no material change in the facts and circumstances upon which the rule is based.

## Appendix III

### Summary of Federal Guidelines for Cost-Benefit Analysis and Other Analytic Requirements

Section 6(a)(3)(C) of Executive Order 12866 (Regulatory Planning and Review) and OMB Circular A-4 provide guidance to federal agencies involved in developing a cost-benefit analysis for a rule that may have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy or certain other sectors.<sup>22</sup> OMB designed this guidance to standardize the way benefits and costs of federal regulatory actions are measured and reported. Besides calling on agencies to estimate the overall benefits and costs of a proposed rule, this guidance stipulates that an agency's cost-benefit analysis should provide a separate description of distributional effects (i.e., how both benefits and costs are distributed among populations of particular concern) so that decision makers can properly consider them along with the effects on economic efficiency.

Another area of the guidance deals with the scope of the analysis as it pertains to effects outside the United States. While the guidance notes that analysis should focus on benefits and costs that accrue to citizens and residents of the United States, it also states that where an agency chooses to evaluate a regulation that is likely to have effects beyond the borders of the United States, these effects should be reported separately.

OMB Circular A-4 also reminds agencies that in preparing analytical support for rule making, there are a number of analytic requirements imposed by law and executive order that are in addition to the regulatory analysis requirements of Executive Order 12866. An agency should consider whether the rule will need specialized analysis of any of the following issues.<sup>23</sup>

- Impact on small businesses and other small entities: Under the Regulatory Flexibility Act (5 U.S.C. §§ 603-604), agencies must prepare an initial and a final regulatory flexibility analysis (RFA) if the rule making could have a significant impact on a substantial number of small entities. Circular A-4 provides that an agency should consider posting its RFA on the Internet so the public can review its findings.

Circular A-4 also states that an agency should have guidelines on how to prepare an RFA and encourages agencies to consult with the Chief Counsel for Advocacy of the Small Business Administration on expectations concerning what is an adequate RFA. Executive Order 13272 requires an agency to notify

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<sup>22</sup> OMB Circular A-4 (2003).

<sup>23</sup> OMB Circular A-4 requires agencies to address seven issues to determine whether a specialized analysis will be needed. In this appendix, we included only those that may pertain to the Travel Initiative.

### Appendix III

the Chief Counsel for Advocacy of any draft rules that might have a significant economic impact on a substantial number of small entities.

- Analysis of unfunded mandates: Under the Unfunded Mandates Act (2 U.S.C. § 1532), an agency must prepare a written statement about benefits and costs prior to issuing a proposed or final rule (for which the agency published a proposed rule) that may result in aggregate expenditure by state, local, and tribal governments, or by the private sector, of \$100 million or more in any year (adjusted annually for inflation). According to OMB, an agency's analytical requirements under Executive Order 12866 are similar to the analytical requirements under this act, and thus the same analysis may permit it to comply with both analytical requirements.
- Information collection, paperwork, and record-keeping burdens: Under the Paperwork Reduction Act (44 U.S.C. §§ 3506-3507), an agency will need to consider whether its rule making (or other actions) will create any additional information collection, paperwork, or record-keeping burdens. These burdens are permissible only if it can justify the practical utility of the information for the implementation of its rule. OMB approval will be required of any new requirements for a collection of information imposed on 10 or more persons, and a valid OMB control number must be obtained for any covered paperwork. According to Circular A-4, an agency's Chief Information Officer should be able to assist it in complying with the Paperwork Reduction Act.

## Appendix IV

### Alternatives Proposed for Use under the Travel Initiative and Their Suitability for Use in Lieu of a Passport

We reviewed several alternative documents or programs that have been proposed as substitutes for a passport under the Travel Initiative. Table 1 summarizes several alternatives that have been proposed for the U.S.-Canadian land border. For comparison purposes, we also include Canadian and U.S. passports in the table. Frequent traveler programs refer to the NEXUS and FAST programs, which operate along the northern border.<sup>24</sup> NEXUS is for commuters who live in border communities who frequently travel back and forth across the border, and FAST is for truck companies and their drivers who transport goods across the border. Driver's licenses with enhanced security features are required under the REAL ID Act.<sup>25</sup> The act requires states that want their driver's licenses to be accepted for official federal purposes to adopt standard practices for adding enhanced security features in driver's licenses by May 2008. The act does not specifically require states to show citizenship on driver's licenses.

Because DHS and State have not made a final decision as to which alternative to implement or whether to implement one at all, our assessment is based upon the information we obtained from interviews with DHS and State officials and announcements made by the agencies.

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<sup>24</sup>Since we are focusing our work on the northern border, we did not include SENTRI, a frequent traveler program for those crossing the southern border, in our evaluation.

<sup>25</sup>Pub. L. No. 109-13, §§ 201-207, 119 Stat. 302, 311-316 (2005).

## Appendix IV

**Table 1: Alternatives Proposed for Use under the Travel Initiative for the U.S.-Canadian Land Border<sup>a</sup>**

	<b>Establishes citizenship</b>	<b>Establishes identity</b>	<b>Available to U.S. citizens</b>	<b>Available to Canadian citizens</b>	<b>Cost</b>	<b>Document validity</b>
PASS card	✓	✓	✓		Undecided	Undecided
Frequent traveler programs	✓	✓	✓	✓	\$50 USD \$80 CAN	5 years
Enhanced driver's licenses		✓	✓		Varies by state law	Varies by state law
Day passes	Undecided	Undecided	Undecided	Undecided	Undecided	Undecided
U.S. passport <sup>b</sup>	✓	✓	✓		\$97 USD	10 years
Canadian passport <sup>c</sup>	✓	✓		✓	\$87 CAN	5 years

Source: GAO analysis of DHS and State data.

<sup>a</sup>According to DHS officials, other documents that could be considered are U.S. military identification and American Indian/tribal identification.

<sup>b</sup>The cost of a U.S. passport is \$97 USD for an adult 16 years and older and is valid for 10 years. The cost of a U.S. passport for a child under 16 is \$82 USD and is valid for 5 years.

<sup>c</sup>Canadian passports issued to Canadians living in Canada cost \$87 CAN. For those Canadians living in the United States, the cost to obtain a Canadian passport is \$97 CAN. For those Canadians living elsewhere, the cost to obtain a passport is \$100 CAN.



Appendix V

Comments from the U.S. Department of State



United States Department of State

*Assistant Secretary for Resource Management  
and Chief Financial Officer*

*Washington, D.C. 20520*

Ms. Jacquelyn Williams-Bridgers  
Managing Director  
International Affairs and Trade  
Government Accountability Office  
441 G Street, N.W.  
Washington, D.C. 20548-0001

MAY 24 2006

Dear Ms. Williams-Bridgers:

We appreciate the opportunity to review your draft report, "Observations on Efforts to Implement the Western Hemisphere Travel Initiative," GAO Job Code 440481.

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact JoAnne Arzt, Biometric Advisor, Bureau of Consular Affairs, at (202) 647-7053.

Sincerely,

A handwritten signature in black ink, appearing to read "Bradford R. Higgins".

Bradford R. Higgins

cc: GAO -- Neil Asaba  
CA -- Maura Harty  
State/OIG -- Mark Duda

Department of State Comments on GAO Draft Report

Observations on Efforts to Implement the Western Hemisphere Travel Initiative  
(GAO-06-741R, GAO Code 440481)

Thank you for the opportunity to respond to the report entitled: *Observations on Efforts to Implement the Western Hemisphere Travel*. We are concerned by the report's conclusion, questioning the Department of State's progress in carrying out the mandate of the Intelligence Reform and Terrorism Prevention Act of 2004.

As we outlined in our exit meeting on May 8, State has been fully engaged in pro-active preparations for implementation of the mandate with full intentions of meeting the Congressional deadline of January 1, 2008. The Department of Homeland Security (DHS) and State, in response to the legislation, proposed the Western Hemisphere Travel Initiative (WHTI). The following is a summary of the actions we have taken to date as part of the WHTI.

**Rule making**

Through publication of an Advanced Notice of Proposed Rulemaking (ANPRM) (joint with DHS) published on September 1, 2005, we divided the schedule into two phases: 1 January 2007 for travelers returning by air or sea from Canada, Mexico or the Caribbean; 1 January 2008 for travelers returning across U.S. land borders with Canada or Mexico. We received over 2,000 public comments which we have factored into our planning, as well as incorporated in the Notices of Proposed Rulemaking for air and sea arrivals and for the passport card.

- With DHS, we have drafted a Notice of Proposed Rulemaking for the air and sea portion that is currently in the final clearance process at DHS.
- We coordinated with the Hill on new legislation -- the Passport Services Enhancement Act (HR 4501) - authorizing the Secretary of State to establish, collect and retain an additional passport application surcharge; this will be used to cover the costs of meeting the increased passport demand resulting from the legislation.

- We prepared an Interim Final Rule for the surcharge which is in clearance.
- We have drafted the Notice of Proposed Rulemaking on the passport card that can be published as soon as a technology choice is made.
- We are engaged in initial discussions with DHS on publishing the Rule for the land border phase. We plan to publish it later this calendar year.

#### Meeting Passport Demand

- We commissioned a study to determine the number of border crossers who would need documentation as a result of the new requirements.
- We began a multi-year effort to increase our passport adjudication and production capacity. We were able to secure approval to hire an additional 105 government employees to provide “inherently governmental” passport services, especially the critical determination that an individual is a U.S. citizen and qualifies for the passport he or she is seeking.
- More recently, and in response to surging demand for passports, we received approval to hire an additional 130 government personnel to adjudicate passport applications. The Department has also made commensurate increases in private sector staff at our passport facilities to handle many of the support and production aspects of the U.S. passport program.
- We have significantly expanded our network of passport acceptance agents in the last several years and we continue to work with our acceptance agent partners to make the passport application process easily accessible to all Americans. We are working with the U.S. Postal Service to increase by 2,000 (from 7,500) the number of passport acceptance facilities, particularly in the affected border areas.

- We are expanding the footprint for seven passport agencies; we are opening a new mega processing facility in 2006; and we opened a new Passport Agency in Denver in 2005.
- To cope with increased demand and to minimize wait times, we have added additional shifts at our production facilities.

#### **Development of Passport Card**

- Based on the comments made by Congress as well as concerns expressed during our outreach efforts and in response to the publication of our joint advanced notice of proposed rulemaking, both State and DHS recognized that there are many circumstances in which a book-style U.S. passport is not the optimal solution for travel – particularly in communities along the northern and southern border.
- As part of their joint vision, “Secure Borders, Open Doors in the Information Age,” Secretaries Rice and Chertoff announced in January 2006 the development of a passport card, which will be a secure, credit-card-sized citizenship and identity document that carries the rights and privileges of a standard U.S. passport, but which may only be used for travel across U.S. land borders.
- The passport card will be adjudicated and issued by the Department of State to the exact same standards as the traditional, book-style passport. The passport card will be produced as part of a system of Border Management travel documents called PASS (People, Access, Security, Service), which will serve as a platform for the Department of Homeland Security’s Registered Traveler (RT) program.
- We have agreed that this passport card will be considerably less expensive than a traditional, book-style passport. The State Department has a goal of reducing the cost as much as possible below the \$97.00 cost for someone making their first application for the traditional passport book. We anticipate that the validity period will be the same as the passport book, 10 years for adults, and 5 years for minors under age 16.

- State and DHS are working together to develop the technical requirements for the passport card. State plans to publish a request for proposals associated with this card. We have proposals drafted for both options ready for release as soon as the technology decision is finalized. Both Departments are working to determine which of two Radio Frequency Identification (RFID) technology options best addresses security requirements, privacy concerns and civil liberties issues such as data integrity and redress procedures.

### Cost Analysis

In March 2006, the Bureau for Consular Affairs (CA) contracted with IBM to review the last cost of service study for passports (CY 2004) in light of the Western Hemisphere Travel Initiative and increased workload to enable the Department to determine:

1. the cost for the new card-format passport;
2. whether the cost of the passport book could be reduced; and
3. the amount of the surcharge that would reflect the increased costs to the Department to be incurred as a result of the increased demand for passports.

CA separately reviewed the cost factors for the execution fee (which is retained by designated passport acceptance facilities throughout the U.S.).

### Funding

- We coordinated with Congress to obtain a mechanism to cover additional WHTI funding - HR 4501 Passport Enhancement Services Act of 2005.

### Outreach

- The Department of State recognizes that a critical part of successful implementation is public participation in the regulatory process. With this in mind, we have and will continue to solicit public comments and to provide the public an opportunity not just to comment upon any rules, but also to offer concrete suggestions as to how this process can be improved. In addition and in concert with

our colleagues at DHS, we have engaged in numerous meetings with the public and with stakeholders, and we will continue to do so.

- Additionally, State has conducted extensive outreach to Congress to include: two briefings for the Northern Border Caucus; one for the House Travel Caucus; one for the Immigration Caucus; two briefings for the Senate Appropriations Committee; one for the House Homeland Security Committee. We provided briefings for individual offices including Congressmen Manzullo, Reynolds, Slaughter and Senators Cornyn, Clinton and Schumer. The Senate held three hearings on WHTI, two under the Senate Foreign Relations Committee chaired by Senator Coleman and one field hearing chaired by Senator Cornyn. State has also held numerous discussions with individual staff members from border delegations and has responded to congressional inquiries from individual members and delegations from both the Northern and Southern Border Caucuses.
- The Department of State is committed to extensive public outreach to explain WHTI and our plans to facilitate compliance, and we have participated in over 125 outreach efforts in 22 U.S. states, 5 Canadian provinces, and 6 countries.

(440481)

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