



Department of Homeland Security Office of Inspector General

Customs and Border Protection's Implementation of the Western Hemisphere Travel Initiative at Land Ports of Entry



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Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibilities to promote economy, efficiency, and effectiveness within the department.

This report addresses Customs and Border Protection's implementation of the Western Hemisphere Travel Initiative at land ports of entry and actions needed to be better prepared to fully enforce the new document requirement. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. We trust this report will result in more effective, efficient, and economical operations. We express our appreciation to all of those who contributed to the preparation of this report.

A handwritten signature in black ink, appearing to read "Anne L. Richards".

Anne L. Richards
Assistant Inspector General for Audits

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Abbreviations

CBP	Customs and Border Protection
DHS	Department of Homeland Security
OIG	Office of Inspector General
TECS	Travelers Enforcement Communication System
WHTI	Western Hemisphere Travel Initiative

OIG

*Department of Homeland Security
Office of Inspector General*

Executive Summary

The Western Hemisphere Travel Initiative requires citizens of the United States, Canada, Bermuda, and Mexico arriving at land ports of entry to present passports or other approved documents to enter the United States. Although the Western Hemisphere Travel Initiative became effective at land ports on June 1, 2009, Customs and Border Protection is not fully enforcing the new document requirement. Customs and Border Protection is using informed compliance procedures to educate noncompliant travelers about the new document requirement. Customs and Border Protection is reporting an average compliance rate of 96% at its land border crossings. Our objective was to determine whether Customs and Border Protection is prepared to fully enforce the Western Hemisphere Travel Initiative's new document requirement at land ports of entry.

Customs and Border Protection is not prepared to fully enforce the new document requirement at land ports of entry. Although Customs and Border Protection has acquired and deployed substantial technological tools to aid in inspecting travelers, Customs and Border Protection has not analyzed the impact that a substantial increase in secondary inspection workload will have on secondary inspection staffing and infrastructure during full enforcement. The reported Western Hemisphere Travel Initiative compliance rates during the initial eight-month informed compliance period indicate noncompliant travelers arriving at the agency's 39 busiest land ports may increase the secondary inspection workloads at these ports by an average of 73% if all noncompliant travelers required secondary inspections.

The agency has not finalized the operating procedures its officers will use to verify the identity and citizenship of noncompliant travelers. Customs and Border Protection officials told us other priorities have precluded them from completing the operating procedures. Until the new travel document requirement is fully enforced, the agency continues to incur risk that persons falsely claiming to be citizens of the United States, Canada, and Bermuda may be admitted to the United States. We are making four recommendations to better prepare the agency to fully implement the new requirement at land ports of entry. CBP agreed with our proposed corrective actions and is in the process of implementation.

Background

A primary mission of the United States Customs and Border Protection (CBP) is preventing terrorists and terrorist weapons from entering the United States. On a typical day in fiscal year 2009, CBP's Office of Field Operations processed about 700,000 incoming travelers at land ports of entry. This processing includes "primary inspections" to initially determine whether travelers are compliant with applicable entry rules and regulations, and when needed, "secondary inspections" if a CBP officer determines that further inspection processes are necessary to grant a traveler's entry into the United States.

With passage of the *Intelligence Reform and Terrorism Prevention Act (IRPTA) of 2004*, (Public Law 108-458), Congress sought to strengthen the processes that allow travelers to enter the United States. Section 7209 of the Act noted the existing admission procedures allowed many individuals to enter the United States with little to no identification and that additional safeguards were needed to prevent terrorists from entering the United States.

IRPTA required the Secretary of Homeland Security, in consultation with the Secretary of State, to develop and implement a plan to "require a passport or other document, or combination of documents, deemed by the Secretary of Homeland Security to be sufficient to denote identity and citizenship, for all travel into the United States by United States citizens and by categories of individuals for whom passport requirements were previously waived under section 212(d)(4)(B) of the Immigration and Nationality Act." To implement these requirements, the Departments of Homeland Security and State published two final rules, one related to air travel and the second to land and sea travel. These rules are part of what is known as the Western Hemisphere Travel Initiative (WHTI).

Prior to January 31, 2008, U.S. citizens, Canadians, and Bermudians were not required to present any form of identification to the CBP officer at a land port and could orally declare citizenship upon arrival. With the WHTI Land and Sea Final Rule becoming effective June 1, 2009, CBP sought to prepare the public for the document change during a WHTI transition phase, which occurred from January 31, 2008 to May 31, 2009. During this transition phase, all United States, Canadian, and Bermudian citizens 19 years and older who entered the United States at land and sea ports of entry from within the Western Hemisphere were

required to present a government-issued photo identification along with proof of citizenship or a valid passport or other acceptable document. Verbal claims of citizenship alone were no longer sufficient to establish citizenship for entry into the United States. CBP's primary focus during the transition phase was public education, preparation, and awareness.

Effective June 1, 2009 the Land and Sea Final Rule requires U.S., Canadian, and Bermudian citizens, who were previously exempt from documentary requirements, to present a passport or other WHTI-compliant document for entry into the United States at all land ports of entry.¹ WHTI compliant documentation consists of:

- U.S., Canadian, Bermudian passports,
- U.S. Passport Card,
- Mexican passport and visa,
- Border Crossing Card issued by the Department of State,
- Enhanced Driver's Licenses,
- Trusted Traveler Cards (NEXUS, SENTRI, or FAST),
- Form I-872 American Indian Card, or Enhanced Tribal Cards (when available),
- Military Identification Cards (for members of the U.S. armed forces on official orders),
- U.S. Merchant Mariner Document (for U.S. citizens on official maritime business),
- Birth certificate, Canadian Citizenship Card, or a Canadian naturalization certificate (for Canadians under age 16 or groups of children under age 19), and
- Birth certificate, a Consular Report of Birth Abroad issued by the Department of State, or a Certificate of Naturalization (for U.S. citizens under age 16 or groups of children under age 19).

Although the WHTI document requirement at land ports became effective on June 1, 2009, CBP is not fully enforcing the requirement. CBP's current WHTI implementation strategy at land ports of entry, established in operational guidance dated May 14, 2009, is informed compliance. Informed compliance seeks to encourage compliance through awareness, education, and outreach. CBP's goal is to achieve compliance while not unnecessarily inconveniencing those who are uninformed. The guidance further

¹ Prior to WHTI, at land ports of entry, Mexican citizens were not required to present passports when traveling to the Mexican consulate, or when arriving with a valid Border Crossing Card from any contiguous territory. As of June 1, 2009, the Mexican passport requirement is waived at land ports only for individuals with Border Crossing Cards arriving from Mexico (but not any other territory).

states the majority of noncompliant U.S. and Canadian citizens, once advised of the requirements will be admitted at primary.

Under informed compliance, few WHTI-noncompliant travelers have undergone secondary inspections solely for failing to present a WHTI-approved document. According to the May 14, 2009 operational guidance, WHTI-noncompliant travelers who the primary CBP officer determines to have presented unacceptable documentation on at least two previous occasions, when operationally feasible, may be referred to secondary for verification of identity and citizenship. Based on this guidance, CBP officers only referred about 9,000 WHTI-noncompliant travelers for a secondary inspection from June 1, 2009 through January 31, 2010.

CBP received \$365 million in funding in fiscal years 2008 (\$225) and 2009 (\$140) to implement WHTI at land ports of entry. CBP developed Radio Frequency Identification (RFID) enabled documents, new software technology for the vehicle primary lanes known as the Vehicle Primary Client (VPC), and the RFID physical infrastructure at its high volume land ports. DHS awarded a contract on January 10, 2008 to begin the process of deploying the RFID facilitative technology and infrastructure to 354 vehicle primary lanes at 39 high-volume land ports, which process 95 percent of land border traveler crossings.

CBP has now deployed the VPC software to all land ports of entry and the RFID technology to the top 39 high volume land ports of entry covering approximately 95 percent of land border traffic. The RFID technology facilitates travel by allowing traveler information to be displayed for its officers and automatically queries law enforcement databases allowing documents to be authenticated to original source information as the vehicle approaches the primary inspection area. As a result of WHTI, CBP estimates that travel document query rates at the land border crossings have increased significantly from 2005 to 2010.

Results of Audit

CBP is not prepared to fully enforce the WHTI document requirement at land ports of entry. According to CBP, WHTI compliance rates have averaged 96% at all border crossings during the initial eight-month informed compliance period. However, the 4% of travelers who do not have WHTI-compliant documents could result in a significant increase in secondary inspection

workload at many of CBP's high-volume land ports. This is especially true at border crossings in southern states which are experiencing a lower than average compliance rate. For example, the compliance rate for land ports in the state of Texas during the initial eight-month compliance period was reportedly 91%. This level of compliance equates to 1.1 million additional travelers that could be sent to secondary inspections during this eight-month period if WHTI document requirements were strictly enforced. Noncompliant travelers could result in CBP's 39 high-volume land ports of entry experiencing an average 73% increase in secondary inspection workload under full enforcement. CBP has not analyzed the impact that this substantial increase in secondary inspection workload will have on secondary inspection staffing and infrastructure.

CBP also has not finalized the operating procedures its officers will use to process noncompliant travelers under full enforcement including the conditions requiring travelers be sent to secondary inspection areas, and the minimum inspection requirements and detailed steps needed to verify a noncompliant traveler's identity and citizenship. Customs officials told us other priorities have precluded them from completing the operating procedures. Finally, CBP has not determined the date when it will move to full enforcement of WHTI requirements at land ports of entry. Until it initiates full enforcement, CBP continues to not gain the full benefits of the WHTI program and continues to incur risk that CBP officers may erroneously grant admission to persons falsely claiming to be citizens of the U.S., Canada, Bermuda, and Mexico.

Potential For Substantial Increase in Secondary Inspections

CBP provided data showing compliance rates for the first eight months of the informed compliance period, June 1, 2009 through January 31, 2010. CBP's reported compliance rates averaged 96% and are significantly higher at northern border ports, averaging 98%, than at southern border locations, which are averaging 93% compliance. Table 1 shows the numbers of compliant and noncompliant travelers and associated compliance rates for land border ports of entry.

Table 1: WHTI Compliance by State During the Informed Compliance Period - June 1, 2009 to January 31, 2010

<i>Border State</i>	<i>WHTI-Compliant Travelers</i>	<i>WHTI-noncompliant Travelers</i>	<i>Total Travelers</i>	<i>Compliance Rate</i>
<i>New York</i>	10,542,984	187,988	10,730,972	98.25%
<i>Michigan</i>	7,240,330	150,944	7,391,274	97.96%
<i>Washington</i>	5,854,090	41,717	5,895,807	99.29%
<i>Maine</i>	2,624,137	77,302	2,701,439	97.14%
<i>Vermont</i>	1,572,884	18,159	1,591,043	98.86%
<i>Minnesota</i>	928,262	36,244	964,506	96.24%
<i>North Dakota</i>	850,594	21,287	871,881	97.56%
<i>Montana</i>	606,156	10,787	616,943	98.25%
<i>Idaho</i>	289,702	4,526	294,228	98.46%
<i>Alaska</i>	79,799	2,094	81,893	97.44%
<i>New Hampshire</i>	7,015	349	7,364	95.26%
<i>Oregon</i>	1,522	12	1,534	<u>99.22%</u>
<i>Subtotal Northern States</i>	30,597,475	551,409	31,148,884	98.23%
<i>Texas</i>	11,675,852	1,116,780	12,792,632	91.27%
<i>California</i>	10,068,907	499,572	10,568,479	95.27%
<i>Arizona</i>	2,537,494	170,917	2,708,411	93.69%
<i>New Mexico</i>	119,880	10,805	130,685	<u>91.73%</u>
<i>Subtotal Southern States</i>	24,402,133	1,798,074	26,200,207	93.14%
<i>Total</i>	54,999,608	2,349,483	57,349,091	95.90%

Despite the high compliance rates, the number of WHTI-noncompliant travelers may represent a significant increase in secondary workload at some ports when CBP moves to full enforcement. During the first eight-months of the informed compliance period, 2.3 million travelers were deemed WHTI-noncompliant, a potential 3.6 million noncompliant travelers annually. Almost half, or 1.1 million, of these WHTI-noncompliant travelers arrived at ports in the state of Texas. This equates to potentially 1.7 million noncompliant travelers annually that may be sent to secondary inspection under full WHTI enforcement at Texas ports of entry.

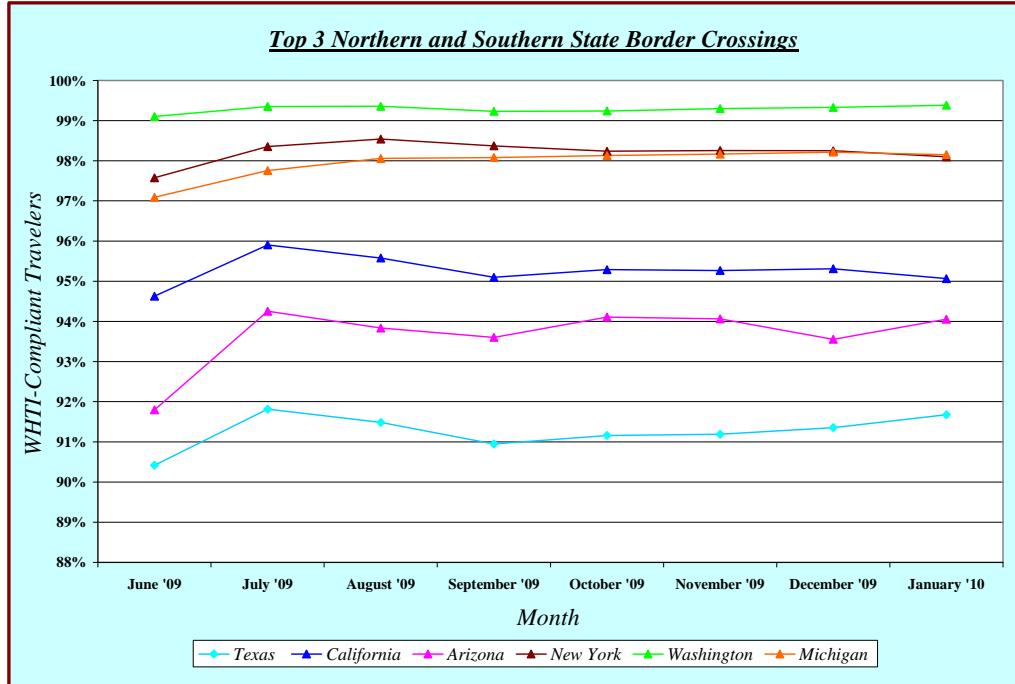
For example, the Port of El Paso referred 117,124 travelers to secondary during the initial eight-month informed compliance period. If CBP had been fully enforcing WHTI during this period, it may have referred an additional 146,769 WHTI-noncompliant

travelers to secondary. This number equates to a 125% increase in secondary inspection workload at that port.

According to an Office of Field Operations official, CBP's efforts to enforce WHTI are hindered because the implementing law, IRTPA, lacks an enforcement provision, such as a monetary penalty for noncompliance. As a result, CBP says that the only action it can take to fully enforce WHTI at land ports of entry is to refer WHTI-noncompliant travelers for a secondary inspection, thereby delaying their admittance to the U.S.

The goal of informed compliance is to encourage travelers to comply with WHTI. Through this policy, CBP aims to achieve a higher rate of compliance over time. However, data from the initial eight-month informed compliance period shows compliance rates have not improved since the second month, and in some cases have decreased for some states. For example, land border ports of entry in Arizona reportedly increased from approximately 91.8% in June 2009 to 94.1% in July 2009 and were 94% in January 2010. Exhibit 1 shows how compliance rates generally increased from the first to second month of informed compliance and have fluctuated very little during subsequent months in six northern and southern border crossing states.

Exhibit 1: Compliance Rates at Select Border Crossing States



According to an Office of Field Operations official, CBP's strategy for implementing WHTI land is similar to the manner it implemented WHTI in the air environment. Specifically, CBP implemented WHTI air in two phases designated as "informed compliance" and "full enforcement." The informed compliance phase of WHTI air lasted from January 23, 2007 to February 18, 2008, a period of 13 months. CBP believes that it should operate informed compliance at land border ports of entry a similar amount of time before transitioning WHTI land from informed compliance to full enforcement. CBP has been operating informed compliance at land ports of entry for 13 months as of July 2010, but does not yet have an announced date to move to full enforcement of WHTI requirements.

Impact of WHTI-Noncompliance on Ports

CBP has not analyzed the impact the potential substantial increase in secondary inspection workload will have on secondary inspection staffing and infrastructure. CBP has not determined whether the ports have sufficient resources, such as CBP officers, computer workstations, and parking spaces to accommodate WHTI-noncompliant travelers who may be referred to the secondary inspection areas. Our analysis determined that CBP

may not have enough officers or infrastructure to support an average 73% increase in secondary workload.

When a primary CBP officer conducts an inspection of a traveler and the officer determines the traveler needs additional screening, the traveler is directed to a secondary inspection area, usually located inside an administrative building at the port. The traveler is processed by a CBP officer at a computer workstation. The processing involves the CBP officer accessing various law enforcement databases and reviewing other documents in the traveler's possession to verify their identity and citizenship. In addition, if the traveler is entering the U.S. in a personal vehicle, a designated parking space in the secondary inspection area will be needed.

CBP Officers

CBP requested and received 294 CBP officer positions in fiscal years 2008 and 2009 to implement WHTI at land border ports. CBP estimated there would be a 15% increase in secondary inspections due to 100% checking of all traveler documents under WHTI. We analyzed WHTI compliance data from the initial eight-month informed compliance period and determined that while 96% of travelers were reportedly WHTI-compliant, the 4% who were not would cause CBP's secondary inspection workload to increase by an average of 73% at its top 39 high-volume ports. Accordingly, CBP may have an insufficient number of CBP officers at some ports to facilitate full enforcement of WHTI.

For example, at the Port of El Paso, which encompasses four crossings, CBP officers referred 117,124 travelers to secondary during the eight-month period we reviewed. During the same period, El Paso processed 146,769 WHTI-noncompliant travelers. Thus, if CBP were fully enforcing WHTI beginning June 1, 2009, El Paso may have referred a total of 263,893 travelers to secondary during this period, an increase of 125%. The Port of El Paso received 8 additional CBP officer positions to accomplish the anticipated increase in inspections due to full enforcement of WHTI requirements. Table 2 summarizes the percentage increases in secondary inspection workload at CBP's 39 highest-volume land ports of entry.

Table 2: Calculated Increase in Secondary Workload at 39 High-Volume Ports Based on June 2009 to January 2010 Data

Port	Total Referrals	WHTI-noncompliant Travelers	Projected Referrals Under Full Enforcement	Percentage Increase
<i>Blaine, WA</i>	125,965	21,027	146,992	16.69%
<i>Buffalo, NY</i>	278,053	108,648	386,701	39.07%
<i>El Paso, TX</i>	117,124	146,769	263,893	125.31%
<i>Brownsville, TX</i>	185,750	245,370	431,120	132.10%
<i>Calexico/East, CA</i>	90,842	77,720	168,562	85.56%
<i>Calexico/West, CA</i>	148,916	136,496	285,412	91.66%
<i>Detroit, MI</i>	226,917	111,044	337,961	48.94%
<i>Douglas, AZ</i>	78,484	47,035	125,519	59.93%
<i>Eagle Pass, TX</i>	96,918	186,765	283,683	192.70%
<i>Hidalgo, TX</i>	112,071	126,099	238,170	112.52%
<i>Laredo, TX</i>	204,691	220,042	424,733	107.50%
<i>Nogales, AZ</i>	81,397	43,054	124,451	52.89%
<i>Otay Mesa</i>	158,743	78,167	236,910	49.24%
<i>San Ysidro, CA</i>	282,094	167,285	449,379	59.30%
<i>25 Remaining High-Volume Ports</i>	780,222	437,035	1,217,257	56.01%
Total	2,968,187	2,152,556	5,120,743	72.52%

Physical Infrastructure

CBP's budgetary justifications for WHTI indicates that CBP requested and received \$365 million in funding in fiscal years 2008 (\$225) and 2009 (\$140) to implement WHTI at land ports of entry; however, no funds were obtained to increase the capacity of secondary inspection areas where the WHTI-noncompliant travelers would be sent for verification of identity and citizenship. An Office of Field Operations official confirmed that CBP did not request or receive funds to increase the capacity of its secondary inspection. Thus, ports would be expected to handle any increase in secondary inspection workload related to WHTI with existing infrastructure, including the current number of computer workstations and available parking spaces in secondary inspection areas. Our analysis indicated some ports may not be able to handle

the increased secondary inspection volume under full enforcement of WHTI.

For example, San Ysidro, the busiest land border crossing in the U.S., has 8 computer workstations to process secondary referrals and 37 parking spaces for vehicles in its secondary processing area. During the first eight months (245 days) of the informed compliance period, officers referred 282,094 travelers to secondary or 1,151 per day. San Ysidro also processed 167,285 WHTI-noncompliant travelers during this same period. Under full enforcement of WHTI, the port may have had to refer an additional 683 travelers per day to secondary. Thus, San Ysidro may need to process a total of 1,834 referrals in secondary per day on 8 computer workstations when CBP fully enforces WHTI. Processing this number of travelers with these few computer workstations may cause considerable traveler delays in the port's secondary processing area.

In addition, using historical crossing data for the port, we estimated that during the first eight months of the informed compliance period, 537 vehicles per day needed parking in the secondary inspections area.² During this same eight month period, parking for an additional 319 vehicles per day would have been needed for WHTI non-compliant travelers. Thus, under full enforcement, San Ysidro would need a parking area to handle 856 cars per day. Because the port only has 37 parking spaces in the secondary inspection area, parking 856 vehicles per day under full enforcement would present a challenge.

CBP was unable to provide a reason why it did not determine the impact that full enforcement of WHTI would have on its secondary inspection operations. CBP officials at the ports we visited said that their ability to handle any increase in secondary workload will ultimately depend on the specific requirements the Office of Field Operations places on the ports for conducting secondary inspections of WHTI-noncompliant travelers.

² According to CBP data, 241,235 of the 282,094 (85%) travelers referred to secondary inspection at San Ysidro arrived in personal vehicles. Based on the historical crossing data, we estimated these travelers arrived in 131,637 vehicles or 537 per day (131,637/245).

CBP Procedures for Processing WHTI-noncompliant Travelers Have Not Been Completed

CBP has not finalized the procedures that its officers will use to process WHTI-noncompliant travelers under full enforcement. The Director, WHTI Program Management Office, said the agency has begun drafting the procedures for moving the program to full enforcement; however, other priorities have precluded CBP management from giving final approval to the draft policy and procedures.

The Director, WHTI Program Management Office, said that high compliance rates during the initial compliance period do not warrant moving to full enforcement at this time. CBP also believes it is easier to encourage compliance than to enforce it at this point in time. CBP said its primary goal is to continue to encourage and promote compliance.

CBP's May 14, 2009 operational guidance for the informed compliance period does not provide CBP officers with minimum inspection requirements and detailed steps they should perform to verify the identity and citizenship of WHTI-noncompliant travelers during secondary inspection. Failure to include minimum requirements in the operating procedures on how CBP officers should process these travelers leaves the opportunity for inconsistent processing and ultimately increases the risk that someone could enter the U.S. under false pretense of citizenship.

Recommendations

We recommend the Assistant Commissioner, Office of Field Operations:

Recommendation 1: Determine the impact that full enforcement of WHTI document requirements will have on the number of travelers referred to secondary inspection, and the impact of the referrals on land ports of entry staffing and infrastructure needs.

Recommendation 2: Develop a strategy to facilitate the inspection of WHTI-noncompliant travelers for those ports whose current staffing levels and infrastructure make it operationally unfeasible to process all WHTI-noncompliant travelers.

Recommendation 3: Finalize and issue WHTI full enforcement operational guidance that includes minimum inspection requirements and the specific procedures that CBP officers must follow to process WHTI-noncompliant travelers and to establish their identity and citizenship.

Recommendation 4: Establish a firm target date for moving from informed compliance to full enforcement of WHTI land document requirements.

Management Comments and OIG Analysis

In its official comments, CBP indicated the OIG proposed to automatically refer all WHTI-noncompliant travelers to secondary inspection. While the OIG discussed this issue with CBP during the audit, the draft report did not propose this procedure. The report states that based on data from the first eight-months of the informed compliance phase, there was a potential for substantial increase in secondary inspection workload at some ports. Further, CBP had not analyzed the impact this potential increase would have on secondary inspection staffing and infrastructure. Thus, we recommended that CBP conduct an analysis of the impact that the WHTI document requirement would have on the number of travelers referred to secondary, and that CBP develop a strategy to facilitate the inspection of WHTI-noncompliant travelers for those ports whose current staffing levels and infrastructure make it operationally unfeasible to process all WHTI-noncompliant travelers at secondary inspection.

Prior to receiving CBP's official comments, it requested the OIG consider modifying recommendation Number 2. Specifically, CBP expressed concerns that secondary inspection areas may not be the most effective law enforcement option and would likely compromise its ability to focus on noncompliant travelers of high interest to law enforcement. The intent of our recommendation is to ensure that CBP develops a strategy to facilitate the inspection of WHTI-noncompliant travelers other than at its primary inspection points, particularly where current port staffing and infrastructure render it operationally unfeasible to refer to a secondary inspection. Based on CBP's proposed action, we removed the word "secondary" from the recommendation.

CBP concurs with all four recommendations. Our summary and analysis of CBP's official response follows.

Management Response on Recommendation # 1

CBP concurred: CBP said a preliminary analysis of WHTI-noncompliant traveler impact on secondary referrals at two border locations indicates that a policy of referring all noncompliant travelers to secondary would not be operationally feasible or desirable at busy land border ports of entry with a constrained physical infrastructure.

OIG Analysis: We consider the proposed action to be responsive to the recommendation. However, this recommendation will remain open and unresolved until we receive a corrective action plan and the secondary operations impact analysis at the Detroit and Laredo ports of entry has been evaluated by the OIG.

Management Response on Recommendation # 2

CBP concurred: CBP said it is evaluating methods to facilitate the screening of WHTI-noncompliant travelers in a manner that is efficient and law enforcement driven. One of the future strategies under consideration is a “pulse and surge” enforcement strategy to concentrate operational efforts on noncompliant United States citizens. The strategy will include providing the noncompliant traveler with appropriate WHTI document applications and information. CBP also continues to focus on increasing query rates of arriving travelers in law enforcement lookout databases, including national security databases, within the land border environment. CBP plans to complete action on this recommendation by May 2011.

OIG Analysis: We consider the proposed action to be responsive to the recommendation. However, this recommendation will remain open and unresolved until we receive a corrective action plan and a finalized strategy for inspecting WHTI-noncompliant travelers.

Management Response on Recommendation # 3

CBP concurred: CBP said it will finalize and issue WHTI full enforcement operational guidance that includes minimum inspection requirements and the specific procedures CBP officers must follow to process WHTI-noncompliant travelers in both the primary and secondary environments. CBP plans to complete this action once it makes the decision to move towards full enforcement as determined by operational conditions.

OIG Analysis: At the Exit Conference, the Director, WHTI Program Management Office, indicated that her office had outlined the procedures. However, this official indicated the procedures cannot be finalized until the analysis described in Recommendation 1 is complete, and the procedures obtain corporate buy-in by CBP senior executives and possibly the Department. We consider this recommendation open and unresolved until we receive a corrective action plan with a target completion date for completing the WHTI land operational guidance.

Management Response on Recommendation # 4

CBP concurred: CBP said the Commissioner of CBP, in consultation with DHS as appropriate, will establish a firm target date for moving to the next enforcement phase of WHTI. The date will be determined by operational conditions.

OIG Analysis: CBP implemented WHTI in the air environment in two phases; informed compliance and full enforcement. WHTI air remained in the informed compliance phase for a period of 13 months. During this audit, a CBP official indicated the agency should remain in the informed compliance phase for WHTI in the land environment for at least a similar amount of time. In March 2010, the official estimated October 1, 2010 to be the date when CBP moved to full enforcement. As of the date of this report, CBP has been operating WHTI land under informed compliance for over 18 months. We consider this recommendation open and unresolved until we receive a corrective action plan with a target completion date for moving from informed compliance to full enforcement of the WHTI land document requirement.

Appendix A

Purpose, Scope, and Methodology

The objective of our audit was to determine whether CBP is prepared to fully enforce WHTI at land ports. Specifically, we determined whether CBP developed policies and procedures for its officers to use to process noncompliant travelers, and whether the agency effectively planned to have sufficient resources to process noncompliant travelers in secondary inspection areas.

We obtained and reviewed applicable federal laws and regulations including the *Intelligence Reform and Terrorism Prevention Act of 2004*, Land and Sea Final Rule, titled, *Documents Required for Travelers Departing From or Arriving in the United States at Sea and Land Ports-of-Entry From Within the Western Hemisphere*, Customs' Directive 3340-040A, *Primary Processing of Travelers and Vehicles Seeking Entry to the United States at Land Ports of Entry*, CBP's *Inspectors Field Manual*, and WHTI guidance memos that CBP's Office of Field operations issued to the field.

We interviewed CBP personnel from the Office of Field Operations, including staff from the WHTI Program Management Office and staff from CBP's Office of Information Technology. We visited five ports of entry with a total of 11 crossings points: San Ysidro, CA, Tecate, CA, Otay Mesa, CA, El Paso, TX and Buffalo, New York. At each location, we interviewed port management officials, observed and interviewed CBP officers processing incoming travelers through the primary and secondary vehicle and pedestrian lanes. At the vehicle primary inspection booths, we observed the performance of the RFID technology and VPC software and obtained feedback from CBP officers on how the technology performed.

To calculate the percentage increase in secondary workload that would result at CBP's top 39 ports if they referred all WHTI-noncompliant travelers to secondary inspection areas, we obtained and reviewed WHTI compliance and port referral data for the period June 1, 2009 through January 31, 2010. We did not verify the reliability of this data. We added the WHTI-noncompliant travelers to the

Appendix A **Purpose, Scope, and Methodology**

secondary referrals. This total would represent the number of referrals that CBP would have processed if CBP was fully enforcing the WHTI document requirement. We then calculated the percentage increase in workload.

To determine the port's infrastructure was capable of supporting a significant increase in secondary workload, we analyzed WHTI-noncompliant traveler data, and compared it with the number of available secondary workstations and parking spaces in the secondary inspection area. We observed port operations, the physical layout of the secondary areas, and interviewed port officials at the five ports we visited. Finally, we asked an official from the Office of Field Operations whether CBP requested or received any funding to increase the infrastructure capacity of port secondary inspection areas for WHTI-noncompliant referrals.

We conducted this performance audit according to generally accepted government auditing standards. Those standards require that we plan, evaluate internal controls and assess risk, and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our audit findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings based on our audit objectives. We conducted our performance audit between July 2009 and April 2010 under the authority of the *Inspector General Act of 1978*, as amended.

Appendix B Management Comments to the Draft Report

1300 Pennsylvania Avenue NW
Washington, DC 20229



**U.S. Customs and
Border Protection**

October 14, 2010

MEMORANDUM FOR RICHARD L. SKINNER
INSPECTOR GENERAL
DEPARTMENT OF HOMELAND SECURITY

FROM: Assistant Commissioner, Office of Internal Affairs 
U.S. Customs and Border Protection

SUBJECT: Response to the Office of Inspector General's Draft Report
Entitled, "Customs and Border Protection's Implementation
of the Western Hemisphere Travel Initiative at Land Ports
of Entry"

Thank you for the opportunity to review and comment on the draft report entitled, "Customs and Border Protection's Implementation of the Western Hemisphere Travel Initiative at Land Ports of Entry."

The Office of Inspector General's (OIG) report states that U.S. Customs and Border Protection (CBP) is not prepared to fully enforce the Western Hemisphere Travel Initiative (WHTI) document requirement at the land ports of entry. The OIG states that the number of travelers who do not have WHTI-compliant documents could increase CBP's workload in secondary inspection at many of CBP's high volume land ports. CBP has stated to the OIG on several occasions that, in CBP's operational and law enforcement judgment, "full enforcement" should not and will not include a requirement to refer all WHTI-noncompliant travelers to secondary. Referral to secondary is not always necessary, desirable, or the most efficient means of establishing identity and citizenship or using law enforcement resources. Contrary to the OIG's characterization, all travelers must satisfy, and will continue to have to satisfy, the inspecting officer of their identity, citizenship, and admissibility prior to admission to the United States. In the event that a traveler does not possess a WHTI-compliant document, the inspecting officer will use all available documentary and system information as well as oral questioning and inspection techniques to establish identity and citizenship.

The report also states that until the full enforcement procedures are finalized and a firm target date is set, CBP continues to not gain the full benefits of the WHTI program. This assertion does not appear to be grounded in travel data or OIG audit results, and CBP

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Management Comments to the Draft Report

traveler, including the noncompliant traveler, is queried against law enforcement lookout databases including national security databases upon arrival.

Lastly, the report asserts that CBP continues to incur risk that CBP officers may erroneously grant admission to persons falsely claiming to be citizens of the U.S., Canada, and Bermuda. As explained above and on repeated occasions to the OIG, travelers are never admitted until identity, citizenship and admissibility are established to the satisfaction of the inspecting officer. CBP has implemented WHTI, and planned for the contingency of WHTI-noncompliant travelers, in a manner that will make the border more secure. Moreover, OIG conceded during the Exit Conference that its auditors never observed a WHTI-noncompliant individual being admitted to the United States in a manner that posed a law enforcement or terrorist threat, and that their assertion of a potential vulnerability is based entirely on hypothetical scenarios. CBP also explained to the OIG that OIG's proposal to automatically refer all WHTI-noncompliant travelers to secondary inspection would itself reduce the law enforcement resources available to focus on those travelers that pose the highest law enforcement risk and thereby reduce security at the border.

Please see CBP's responses to OIG's recommendations below:

Recommendation #1:

Determine the impact that full enforcement of WHTI document requirements will have on the number of travelers referred to secondary inspection, and the impact of the referrals on land ports of entry staffing and infrastructure needs.

CBP Response: Concur: CBP is evaluating methods to facilitate the screening of WHTI-noncompliant travelers in other than the standard secondary environment, where and when it is efficient and law enforcement driven. CBP will perform a secondary operations impact analysis for Detroit and Laredo specifically. These locations represent northern and southern border locations. Detroit has a constrained secondary infrastructure and Laredo has less than optimal compliance rates. The goal of the evaluation will be to analyze the impact of implementing a standard operating procedure under which all WHTI-noncompliant individuals would be referred to secondary.

Preliminary analysis indicated that such a policy would not be operationally feasible or desirable at busy land border ports of entry with a constrained physical infrastructure. Since referral to secondary is not always necessary to establish identity and citizenship, business protocols that were implemented for WHTI enforcement in the air environment would need to be modified and specifically tailored for the land environment. Due Date: February 2011

Revised Recommendation 2 as agreed by OIG on 10/13/10: Develop a strategy to facilitate the inspection of WHTI-noncompliant travelers for those ports whose current staffing levels and infrastructure make it operationally unfeasible to process all WHTI-noncompliant travelers.

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CBP Response: Concur with Revised Recommendation Language: CBP is evaluating methods to facilitate the screening of WHTI-noncompliant travelers in the manner that is efficient and law enforcement driven. One of the future strategies under consideration is to employ a WHTI “pulse and surge” enforcement strategy—similar to outbound operations and directed by local port management—to concentrate operational efforts on the noncompliant United States citizens (USC), and provide the noncompliant traveler with appropriate WHTI document applications and information. In addition, CBP continues to focus our limited enforcement resources on increasing query rates within the land border environment, as the law enforcement benefit is clear when compared to the secondary referral of an otherwise legitimate USC traveler who is uninformed, forgetful or impoverished. Secondary will not be the only area in which to inspect WHTI-noncompliant travelers, as some may be admitted after the primary inspection or alternative process.

In addition, CBP would like to clarify that all WHTI-noncompliant travelers are “processed” by CBP and there are no circumstances that make it “operationally unfeasible” to do so. Travelers are never admitted until identity, citizenship, and admissibility are effectively established. This can be done in either the primary or secondary environment, whichever is determined to be the most effective and efficient environment. Any traveler that warrants additional questioning or screening is referred to secondary.

Due Date: May 2011

Recommendation 3: Finalize and issue WHTI full enforcement operational guidance that includes minimum inspection requirements and the specific procedures that CBP officers must follow to process WHTI-noncompliant travelers.

CBP Response: Concur: CBP will finalize and issue operational guidance that specifies procedures for CBP officers to follow when establishing identity and citizenship of WHTI-noncompliant travelers in *both* the primary and secondary environments, as determined by operational conditions when the decision is made by CBP to move towards full enforcement. Due Date: Determined by operational conditions when the decision is made by CBP to move towards full enforcement.

Recommendation 4: Establish a firm target date for moving from informed compliance to full enforcement of WHTI land document requirements.

CBP Response: Concur: The Commissioner of CBP, in consultation with DHS as appropriate, will establish a firm target date for moving to the next enforcement phase of WHTI. Due Date: Determined by operational conditions.

Appendix C **Major Contributors to This Report**

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