

October 31, 2005

The Honorable Maura Harty  
Assistant Secretary of State for Consular Affairs  
Bureau of Consular Affairs  
United States Department of State  
2201 C Street NW  
Room 6811  
Washington, DC 20520

The Honorable Robert C. Bonner  
Commissioner  
Bureau of Customs and Border Protection  
United States Department of Homeland Security  
1300 Pennsylvania Avenue, NW  
Washington, DC 20229

Comments  
Bureau of Customs and Border Protection  
Office of Regulations and Rulings  
Regulations Branch  
1300 Pennsylvania Avenue, NW  
Washington, DC 20229  
<http://regulations.gov>

Re: RIN 1400-AC10 Documents Required for Travel within the Western Hemisphere

Dear Ambassador Harty and Commissioner Bonner:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) submits this comment to the Department of State (DOS) and the Department of Homeland Security's (DHS) advance notice of proposed rulemaking on *Documents Required for Travel within the Western Hemisphere*. The Office of Advocacy is pleased that you are soliciting suggestions on how to ease documentation requirements while providing the necessary and required identification.

## **Advocacy Background**

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small business before Federal agencies and Congress. Advocacy is an independent office within the Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or of the Administration. Section 612 of the RFA requires Advocacy to monitor agency compliance with the Act, as amended by the Small Business Regulatory Enforcement Fairness Act.<sup>1</sup>

On August 13, 2002, President George W. Bush enhanced Advocacy's RFA mandate when he signed Executive Order 13272, which directs Federal agencies to implement policies protecting small entities when writing new rules and regulations. Executive Order 13272 also requires agencies to give every appropriate consideration to any comments provided by Advocacy. Under the Executive Order, the agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to any written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.

## **The Advance Notice of Proposed Rulemaking**

On September 1, 2005, DHS and DOS published an advance notice of proposed rule on *Documents Required for Travel within the Western Hemisphere*.<sup>2</sup> The advance notice of proposed rulemaking outlines the plans to implement Section 7209 of the Intelligence Reform and Terrorism Prevention Act. Section 7209 provides that by January 1, 2008, United States citizens and nonimmigrant aliens may enter the United States only with passports or alternatives that the Secretary of Homeland Security may designate as satisfactorily establishing identity and citizenship. The ANPRM suggests a two stage implementation plan. The first stage would require all individuals traveling to the United States by air or sea to present a valid passport or other documentation that have been deemed by DHS to be sufficient to establish identity and citizenship beginning December 31, 2006. The second stage would require all individuals arriving at the United States land border crossings to present either a valid passport or another document or combination of documents that have been deemed by DHS to be sufficient to establish identity and citizenship beginning December 31, 2007.

Advocacy notes that the implementation date has been extended from the original date of December 31, 2005. Advocacy commends DHS and DOS for extending the implementation date. The additional time period will allow more time for the public to comply and may mitigate some of the impact on small entities.

## **Impact on Small Entities**

In the ANPRM, DHS and DOS requested information about the potential economic impact on several groups, including members of the travel industry, small businesses, and local

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<sup>1</sup> Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612) amended by Subtitle II of the Contract with America Advancement Act, Pub. L. No. 104-121, 110 Stat. 857 (1996). 5 U.S.C. § 612(a).

<sup>2</sup> 70 Federal Register 52037.

governments. Advocacy applauds the agencies' efforts to solicit this information. The implementation of Section 7209 of the Intelligence Reform and Terrorism Preventions Act of 2004 could have a significant economic impact, not only on the traveling public but also the travel industry, small businesses in the towns that are near the borders, and the small towns near the borders that rely on the tourist trade. Currently, 97.4% of all travel agencies and 96.5 % of the tour operating businesses are defined as small entities. In addition, there are other small businesses that rely on tourists like hotel/motels, 95.5% of which are small; restaurants, 97.7% of which are small; sightseeing bus companies, 93.9% of which are small; and souvenir shops, 98.5% of which are small.

Because the implementation of Section 7209 of the Intelligence Reform and Terrorism Preventions Act has the potential of having a foreseeable significant economic impact on a substantial number of small entities like the ones described above, Advocacy encourages DHS and DOS to perform an initial regulatory flexibility analysis (IRFA) as you move towards a proposed rule. An IRFA would not only explore fully the economic impacts of this rule, it would also give the agencies an opportunity to consider less costly alternatives for the rule that could address the safety concerns without harming small entities.

## **Conclusion**

The travel and tourism industry have undergone a number of changes and experienced significant challenges over the past few years. Advocacy encourages DHS and DOS to consider the impact on small entities and alternatives to minimize that impact. Advocacy is available to assist the agencies in developing an analysis and in outreach to small businesses to determine viable alternatives.

Thank you for the opportunity to comment on this important proposal. If you have any questions, please feel free to contact the Office of Advocacy at (202) 205-6533.

Sincerely,

Thomas M. Sullivan  
Chief Counsel for Advocacy

Jennifer A. Smith  
Assistant Chief Counsel  
for Economic Regulation & Banking

cc: Dr. John Graham, Administrator, Office of Information and Regulatory Affairs

