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DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[CBP Dec. 19-13]

Western Hemisphere Travel Initiative: Designation of an Approved Native American Tribal Card Issued by the Swinomish Indian Tribal Community as an Acceptable Document to Denote Identity and Citizenship for Entry in the United States at Land and Sea Ports of Entry

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: Notice.

SUMMARY: This notice announces that the Commissioner of U.S. Customs and Border Protection is designating an approved Native American tribal card issued by the Swinomish Indian Tribal Community to U.S. citizen tribal members as an acceptable travel document for purposes of the Western Hemisphere Travel Initiative. The approved card may be used to denote identity and citizenship of Swinomish Indian Tribal Community members entering the United States from contiguous territory or adjacent islands at land and sea ports of entry.

DATES: This designation will become effective on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Colleen Manaher, Executive Director, Planning, Program Analysis, and Evaluation, Office of Field Operations, U.S. Customs and Border Protection, via e-mail at Colleen.M.Manaher@cbp.dhs.gov or 202-344-3003.

SUPPLEMENTARY INFORMATION:

Background

The Western Hemisphere Travel Initiative

Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Pub. L. 108-458, as amended, required the Secretary of Homeland Security (Secretary), in consultation with the Secretary of State, to develop and implement a plan to require U.S. citizens and individuals for whom documentation requirements have previously been waived under section 212(d)(4)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(4)(B)) to present a passport or other document or combination of documents as the Secretary deems sufficient to denote identity and citizenship for all travel into the United States. *See* 8 U.S.C. 1185 note. On April 3, 2008, the Department of Homeland Security (DHS) and the Department of State promulgated a joint final rule, effective on June 1, 2009, that implemented the plan known as the Western Hemisphere Travel Initiative (WHTI) at U.S. land and sea ports of entry. *See* 73 FR 18384 (the WHTI Land and Sea Final Rule). It amended various sections of the Code of Federal Regulations (CFR), including 8 CFR 212.0, 212.1, and 235.1. The WHTI Land and Sea Final Rule specifies the documents that U.S. citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico are required to present when entering the United States at land and sea ports of entry.

Under the WHTI Land and Sea Final Rule, one type of citizenship and identity document that may be presented upon entry to the United States at land and sea ports of entry from contiguous territory or adjacent islands¹ is a Native American tribal card that has been designated as an acceptable document to denote identity and citizenship by the Secretary, pursuant to section 7209 of IRTPA. Specifically, 8 CFR 235.1(e), as amended by the WHTI Land and Sea Final Rule, provides that upon designation by the Secretary of Homeland Security of a United States qualifying tribal entity document as an acceptable document to denote identity and citizenship for the purposes of entering the United States, Native Americans may be permitted to present tribal cards upon entering or seeking admission to the United States according to the terms of the voluntary agreement entered between the Secretary of Homeland Security and the tribe. It provides that the Secretary of Homeland Security will announce, by publication of a notice in the *Federal Register*, documents designated under this paragraph. It further provides that a list of the documents designated under this section will also be made available to the public.

A United States qualifying tribal entity is defined as a tribe, band, or other group of Native Americans formally recognized by the United States Government which agrees to meet WHTI document standards. See 8 CFR 212.0.² Native American tribal cards are also referenced in 8 CFR 235.1(b), which lists the documents U.S. citizens may use to establish identity and citizenship when entering the United States. See 8 CFR 235.1(b)(7).

¹ “Adjacent islands” is defined in 8 CFR 212.0 as “Bermuda and the islands located in the Caribbean Sea, except Cuba.” This definition applies to 8 CFR 212.1 and 235.1.

² This definition applies to 8 CFR 212.1 and 235.1.

The Secretary has delegated to the Commissioner of U.S. Customs and Border Protection (CBP) the authority to designate certain documents as acceptable border crossing documents for persons arriving in the United States by land or sea from within the Western Hemisphere, including certain United States Native American tribal cards.

See DHS Delegation Number 7105 (Revision 00), dated January 16, 2009.

Tribal Card Program

The WHTI Land and Sea Final Rule allowed U.S. federally recognized Native American tribes to work with CBP to enter into agreements to develop tribal ID cards that can be designated as acceptable to establish identity and citizenship when entering the United States at land and sea ports of entry from contiguous territory or adjacent islands. CBP has been working with various U.S. federally recognized Native American tribes to facilitate the development of such cards.³ As part of the process, CBP will enter into one or more agreements with a U.S. federally recognized tribe that specify the requirements for developing and issuing WHTI-compliant Native American tribal cards, including a testing and auditing process to ensure that the cards are produced and issued in accordance with the terms of the agreements.

After production of the cards in accordance with the specified requirements, and successful testing and auditing by CBP of the cards and program, the Secretary of Homeland Security or the Commissioner of CBP may designate the Native American tribal card as an acceptable WHTI-compliant document for the purpose of establishing identity and citizenship when entering the United States by land or sea from contiguous territory or adjacent islands. Such designation will be announced by publication of a

³ The Native American tribal cards qualifying to be a WHTI-compliant document for border crossing purposes are commonly referred to as “Enhanced Tribal Cards” or “ETCs.”

notice in the *Federal Register*. More information about WHTI-compliant documents is available at www.cbp.gov/travel.

The Pascua Yaqui Tribe of Arizona became the first Native American tribe to have its Native American tribal card designated as a WHTI-compliant document by the Commissioner of CBP. This designation was announced in a notice published in the *Federal Register* on June 9, 2011 (76 FR 33776). Subsequently, the Commissioner of CBP announced the designation of several other Native American tribal cards as WHTI compliant documents. *See, e.g.*, the Native American tribal cards of the Kootenai Tribe of Idaho, 77 FR 4822 (January 31, 2012); the Seneca Nation of Indians, 80 FR 40076 (July 13, 2015); the Hydaburg Cooperative Association of Alaska, 81 FR 33686 (May 27, 2016); and the Pokagon Band of Potawatomi Indians, 82 FR 42351 (September 7, 2017).

Swinomish Indian Tribal Community WHTI-Compliant Native American Tribal Card Program

The Swinomish Indian Tribal Community has voluntarily established a program to develop a WHTI-compliant Native American tribal card that denotes identity and U.S. citizenship. On October 7, 2015, CBP and the Swinomish Indian Tribal Community entered into a Memorandum of Agreement (MOA) to develop, issue, test, and evaluate tribal cards to be used for border crossing purposes. Pursuant to this MOA, the cards are issued to members of the Swinomish Indian Tribal Community who can establish identity, tribal membership, and U.S. citizenship. The cards incorporate physical security

features acceptable to CBP as well as facilitative technology allowing for electronic validation of identity, citizenship, and tribal membership by CBP.⁴

CBP has tested the cards developed by the Swinomish Indian Tribal Community pursuant to the above MOA and related agreements, and has performed an audit of the tribe's card program. On the basis of these tests and audit, CBP has determined that the Native American tribal cards meet the requirements of section 7209 of the IRTPA and are acceptable documents to denote identity and U.S. citizenship for purposes of entering the United States at land and sea ports of entry from contiguous territory or adjacent islands. CBP's continued acceptance of the Native American tribal card as a WHTI-compliant document is conditional on compliance with the MOA and related agreements.

Acceptance and use of the WHTI-compliant Native American tribal card is voluntary for tribe members. If an individual is denied a WHTI-compliant Native American tribal card, he or she may still apply for a passport or other WHTI-compliant document.

⁴ Beginning in 2016, CBP and the Swinomish Indian Tribal Community entered into additional agreements related to the MOA. CBP and the Swinomish Indian Tribal Community entered into a Service Level Agreement (SLA) on September 14, 2016, concerning technical requirements and support for the production, issuance, and verification of the Native American tribal cards. CBP and the Swinomish Indian Tribal Community also entered into an Interconnection Security Agreement on March 15, 2017, with respect to individual and organizational security responsibilities for the protection and handling of unclassified information.

Designation

This notice announces that the Commissioner of CBP designates the Native American tribal card issued by the Swinomish Indian Tribal Community in accordance with the MOA and related agreements as an acceptable WHTI-compliant document pursuant to section 7209 of the IRTPA and 8 CFR 235.1(e). In accordance with these provisions, the approved card, if valid and lawfully obtained, may be used to denote identity and U.S. citizenship of Swinomish Indian Tribal Community members for the purposes of entering the United States from contiguous territory or adjacent islands at land and sea ports of entry.

Dated: December 17, 2019.

Mark A. Morgan,

Acting Commissioner.

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