

# U.S. Customs and Border Protection

CBP Dec. 17-11

**WESTERN HEMISPHERE TRAVEL INITIATIVE:  
DESIGNATION OF AN APPROVED NATIVE AMERICAN  
TRIBAL CARD ISSUED BY THE POKAGON BAND OF  
POTAWATOMI INDIANS 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 Pokagon Band of Potawatomi Indians (Pokagon Band) to U.S. and Canadian citizens 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 Pokagon Band 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 September 7, 2017.

**FOR FURTHER INFORMATION CONTACT:** Colleen Manaher, Executive Director, Planning, Program Analysis, and Evaluation, Office of Field Operations, U.S. Customs and Border Protection, via email at *Colleen.M.Manaher@cbp.dhs.gov*.

**SUPPLEMENTARY INFORMATION:**

**Background**

*The Western Hemisphere Travel Initiative*

Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 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 islands<sup>1</sup> 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.<sup>2</sup> Native American tribal cards are also referenced in 8 CFR 235.1(b), which lists the documents U.S. citizens may use to establish

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<sup>1</sup> 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.

<sup>2</sup> *See* 8 CFR 212.0. This definition applies to 8 CFR 212.1 and 235.1.

identity and citizenship when entering the United States. *See* 8 CFR 235.1(b)(7).

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.<sup>3</sup> 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 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 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 notice in the **Federal Register**. More information about WHTI-compliant documents is available at [www.cbp.gov/travel](http://www.cbp.gov/travel).

The Pascua Yaqui Tribe of Arizona became the first Native American tribe to have its 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 the tribal cards of the Kootenai Tribe of Idaho, the Seneca Nation of Indians, and the Hydaburg Cooperative

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<sup>3</sup> 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.”

Association of Alaska as WHTI-compliant documents. *See* 77 FR 4822 (January 31, 2012), 80 FR 40076 (July 13, 2015) and 81 FR 33686 (May 27, 2016).

*Pokagon Band of Potawatomi Indians WHTI-Compliant Tribal Card Program*

The Pokagon Band of Potawatomi Indians (Pokagon Band) has voluntarily established a program to develop a WHTI-compliant tribal card that denotes identity and U.S. or Canadian citizenship. On August 16, 2015, the Pokagon Band and CBP signed 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 Pokagon Band who can establish identity, tribal membership, and U.S. or Canadian 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. On December 9, 2015, CBP and the Pokagon Band also entered into a Service Level Agreement that establishes the technical specifications for the system used to produce and issue the cards.

CBP has tested the cards developed by the Pokagon Band pursuant to the above MOA and Service Level Agreement and has performed an audit of the tribe's card program. On the basis of these tests and audit, CBP has determined that the cards meet the requirements of section 7209 of the IRTPA and are acceptable documents to denote identity and U.S. or Canadian citizenship for purposes of entering the United States at land and sea ports of entry from contiguous territory or adjacent islands.<sup>4</sup> CBP's continued acceptance of the tribal card as a WHTI-compliant document is conditional on compliance with the MOA.

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

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<sup>4</sup> The Native American Tribal Card issued by the Pokagon Band may not, by itself, be used by Canadian citizen tribal members to establish that they meet the requirements of section 289 of the Immigration and Nationality Act (INA) [8 U.S.C. 1359]. INA section 289 provides that nothing in Title II of the INA shall be construed to affect the right of American Indians born in Canada to pass the borders of the United States, but such right shall extend only to persons who possess at least 50 per centum of blood of the American Indian race. While the tribal card may be used to establish a card holder's identity for purposes of INA section 289, it cannot, by itself, serve as evidence of the card holder's Canadian birth or that he or she possesses at least 50% American Indian blood, as required by INA section 289.

*Designation*

This notice announces that the Commissioner of CBP designates the tribal card issued by the Pokagon Band in accordance with the MOA and the Service Level Agreement between the tribe and CBP 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. or Canadian citizenship of Pokagon Band members for the purposes of entering the United States from contiguous territory or adjacent islands at land and sea ports of entry.

Dated: September 1, 2017.

KEVIN K. McALEENAN,  
*Acting Commissioner.*

[Published in the Federal Register, September 7, 2017 (82 FR 42351)]



**U.S. CUSTOMS AND BORDER PROTECTION USER FEE  
ADVISORY COMMITTEE (UFAC) CHARTER RENEWAL**

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security (DHS).

**ACTION:** Committee management; notice of Federal Advisory Committee charter renewal.

**SUMMARY:** The Department of Homeland Security (DHS) renewed the charter for the U.S. Customs and Border Protection's User Fee Advisory Committee (UFAC) on June 22, 2017. The charter will expire on June 22, 2019.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sonja Grant, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229; telephone (202) 344-1440; facsimile (202) 325-4290.

**SUPPLEMENTARY INFORMATION:**

*Name of committee:* U.S. Customs and Border Protection User Fee Advisory Committee (UFAC).

*Purpose and objective:* The charter of the U.S. Customs and Border Protection User Fee Advisory Committee (UFAC) was renewed for two years in accordance with the Federal Advisory Committee Act (FACA) 5 U.S.C. Appendix. A copy of the charter can be found at <http://www.cbp.gov/trade/stakeholder-engagement/user-fee-advisory-committee>. UFAC is tasked with providing advice to the Secretary of the Department of Homeland Security through the Com-

missioner of U.S. Customs and Border Protection on matters related to the performance of inspections coinciding with the assessment of an agriculture, customs, or immigration user fee.

*Duration:* The committee's charter was renewed on June 22, 2017, and expires on June 22, 2019.

*Responsible CBP officials:* Mr. Bradley Hayes, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.5A, Washington, DC 20229; telephone (202) 344-1440.

Dated: August 28, 2017.

BRADLEY HAYES,  
*Executive Director,*  
*Office of Trade Relations.*

[Published in the Federal Register, September 7, 2017 (82 FR 42353)]