



## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

#### CBP Dec. 21-03

### **Western Hemisphere Travel Initiative: Designation of an Approved Native American Tribal Card Issued by the Muscogee (Creek) Nation 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 Muscogee (Creek) Nation to U.S. and Canadian 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 Muscogee (Creek) Nation 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:** Adele Fasano, Executive Director, Planning, Program Analysis, and Evaluation, Office of Field Operations, U.S. Customs and Border Protection, via e-mail at [Adele.Fasano@cbp.dhs.gov](mailto:Adele.Fasano@cbp.dhs.gov).

## **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). The rule amended various sections in 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 of Homeland Security, pursuant to section 7209 of IRTPA. Specifically, 8

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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.

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 212.1.<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 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 allows U.S. federally recognized Native American tribes to work with CBP to enter into agreements to develop tribal identification cards that can be designated as acceptable to establish identity and

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

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 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 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 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 Puyallup Tribe of Indians, 84 FR 67278 (December 9, 2019); the Swinomish Indian Tribal Community, 84 FR 70984 (December 26, 2019); and the Confederated Tribes of the Colville Reservation, 85 FR 31796 (May 27, 2020).

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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.”

*Muscogee (Creek) Nation WHTI-Compliant Native American Tribal Card Program*

The Muscogee (Creek) Nation has voluntarily established a program to develop a WHTI-compliant Native American tribal card that denotes identity and U.S. or Canadian citizenship. On March 28, 2016, CBP and the Muscogee (Creek) Nation 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 Muscogee (Creek) Nation 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 by CBP of identity, citizenship, and tribal membership.<sup>4</sup>

CBP has tested the cards developed by the Muscogee (Creek) Nation 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 citizenship for purposes of entering the United States at land and sea ports of entry from contiguous territory or adjacent islands.<sup>5</sup> CBP's continued acceptance of the Native American tribal cards 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 cards is voluntary for tribe members. If an individual is denied a WHTI-compliant Native

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<sup>4</sup> CBP and the Muscogee (Creek) Nation entered into a Service Level Agreement (SLA) on April 27, 2017, concerning technical requirements and support for the production, issuance, and verification of the Native American tribal cards. CBP and the Muscogee (Creek) Nation also entered into an Interconnection Security Agreement in November 2016, with respect to individual and organizational security responsibilities for the protection and handling of unclassified information.

<sup>5</sup> The Native American tribal card issued by the Muscogee (Creek) Nation 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 § 289 provides that nothing in this title 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 § 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 § 289.

American tribal card, he or she may still apply for a passport or other WHTI-compliant document.

*Designation*

This notice announces that the Commissioner of CBP designates the Native American tribal card issued by the Muscogee (Creek) Nation in accordance with the MOA and all related agreements 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 Muscogee (Creek) Nation members for the purposes of entering the United States from contiguous territory or adjacent islands at land and sea ports of entry.

The Senior Official Performing the Duties of the Commissioner Mark A. Morgan, having designated the Native American tribal card issued by the Muscogee (Creek) Nation as an acceptable WHTI-compliant document pursuant to section 7209 of the IRTPA and 8 CFR 235.1(e), and having reviewed and approved this notice, is delegating the authority to electronically sign this notice to Robert F. Altneu, who is the Director of the Regulations and Disclosure Law Division for CBP, for purposes of publication in the *Federal Register*.

Date: January 15, 2021

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Robert F. Altneu  
Director, Regulations & Disclosure Law Division  
Regulations & Rulings  
Office of Trade  
U.S. Customs and Border Protection