



INTER TRIBAL COUNCIL of ARIZONA, INC.

December 11, 2007

- MEMBER TRIBES**
 AK-CHIN INDIAN COMMUNITY
 COCOPAH TRIBE
 COLORADO RIVER INDIAN TRIBES
 FORT McDOWELL YAVAPAI NATION
 FORT MOJAVE TRIBE
 GILA RIVER INDIAN COMMUNITY
 HAVASUPAI TRIBE
 HOPI TRIBE
 HUALAPAI TRIBE
 KAIBAB-PAIUTE TRIBE
 PASCUA YAQUI TRIBE
 PUEBLO OF ZUNI
 QUECHAN TRIBE
 SALT RIVER PIMA-MARICOPA
 INDIAN COMMUNITY
 SAN CARLOS APACHE TRIBE
 TOHONO O'ODHAM NATION
 TONTO APACHE TRIBE
 WHITE MOUNTAIN APACHE TRIBE
 YAVAPAI APACHE NATION
 YAVAPAI PRESCOTT INDIAN TRIBE

MEMORANDUM

TO: Tribal Leaders
 Tribal Cultural Resource Officers

FROM: ITCA

SUBJECT: Department of Homeland Security Proposed Cross Border Travel Regulations-U.S. Tribes and Affiliated Tribes in Canada and Mexico

Attached is a briefing paper that discusses the provisions of the Western Hemisphere Travel Initiative (WHTI) Land and Sea notice of proposed rule-making by the U.S. Department of Homeland Security (DHS) and the U.S. Department of State (DOS). The proposed rule contains special rules for travelers permitted to use alternative documents for cross border travel, including members of U.S. federally recognized tribes and members of the Kickapoo Tribe of Texas and Oklahoma. DHS and DOS invited comment on the proposed rule when it was published in the Federal Register on June 27, 2007, as it requires U.S. tribes seeking alternative consideration to submit very detailed information regarding travel for traditional cultural and religious purposes across the international borders.

ITCA is providing this information to the tribes as this Notice of Proposed Rule Making (NRPM) states that this opportunity to comment provides the only opportunity to effect the final rule that is to be implemented on January 31, 2008. This proposed rule shall effect current and future potential travel across the international borders for traditional cultural and religious purposes by U.S. tribal members and members of affiliated tribes in Canada and Mexico.

You may obtain a copy of the proposed rule at:

http://www.dhs.gov/xnews/releases/pr_1182350422171.shtm

You may contact Alida Montiel at ITCA at (602) 258-4822, Extension 1543 for additional information.

Western Hemisphere Travel Initiative (WHTI) Land and Sea Notice of Proposed Rule-Making
by the U.S. Department of Homeland Security

Special Rules for Specific Groups of Travelers Permitted to Use Other Alternative Documents-
Members of Native American Tribes

Briefing Paper

ISSUE: Proposed rules to implement the Western Hemisphere Travel Initiative (WHTI) *land and sea compliance* as required by the Intelligence Reform and Terrorism Prevention Act of 2004 were published on June 26, 2007. It stipulates, "At a date to be determined by the Secretary of Homeland Security with the Secretary of State, the Departments will implement the full requirements of the land and sea phase of WHTI." The proposed rules of the U.S. Customs and Border Protection (CBP), USCBP-2007-0061, once phased-in will substantially impact the regulation of cross-border travel necessary for tribal Indigenous interaction between U.S., Mexican and Canadian tribes, communities or bands for traditional historic, religious and other cultural purposes. The Notice of Proposed Rulemaking (NPRM) states that tribes will only have the opportunity to participate in the shaping of the standards for tribal documents through this rulemaking process and requires that U.S. tribes submit very detailed information.

RECOMMENDATIONS: Enrolled members of American Indian tribal nations have for generations continuously and intermittently maintained a relationship with their Indigenous counterparts in Mexico and Canada. In Arizona this is based on close geographic, linguistic, cultural and familial links that transcend of the establishment of the present U.S.-Mexico border instituted by the Treaty of Guadalupe in 1848 and the Gadsden Purchase of 1853. The acceptance of tribal government enrollment documentation by the Department of Homeland Security (DHS) and the Department of State (DOS) is critical so that the continuation of traditional practices, pilgrimages to sacred sites and language preservation among Indigenous peoples is not disrupted. For several tribes these activities require travel by traditional practitioners across the international borders. These current and future interactions are necessary in order to maintain traditional ethnic, religious and cultural life ways.

Contact between culturally related U.S. tribes and non-immigrant Indigenous communities in Mexico are necessary to maintain ongoing ceremonial practices through exchange of cultural knowledge, acquisition of traditional items and practical communication among members of Indigenous groups necessary for these purposes. In this regard, the final rule should take into consideration the need to provide options for alternative border crossing documentation for non-immigrant visitors from Mexico who are members of or affiliated with U.S. tribal nations. Further CBP should be advised that these traditional practitioners such as healers and individuals both men and women that preside over ceremonial practices are highly regarded by the Tribes and considerable respect to their persons, sacred traditional bundles, medicinal plants and herbs and ceremonial regalia must be afforded during border crossing.

BACKGROUND: New travel documentation requirements for U.S citizens entering or re-entering the United States through land or sea ports-of-entry shall begin on January 31, 2008. In general, the Department of Homeland Security (DHS) and the Department of State (DOS) will require that all adult travelers to present proof of citizenship, such as a birth certificate and proof

of identity, such as a driver's license when entering the United States through land and sea ports-of-entry. The air travel documentation requirements were phased-in from January 23, 2007 thru September 30, 2007.

The proposed rules for land and sea ports-of-entry include special rules for specified groups of travelers including detailed requirements placed on Native American tribes whose enrolled members cross the U.S. southern international border with Mexico for traditional purposes. DHS states that through discussion with some U.S. Native American Tribes, the Department has been informed of the impact of the new documentation requirement on Native Americans tribal members. In these discussions DHS states that U.S. tribes have proposed that tribal enrollment documents should be considered as acceptable for their enrolled tribal members, including for some tribes, members who live on traditional land in Mexico or Canada.

STIPULATIONS OF PROPOSED ACCEPTANCE OF TRIBAL ENROLLMENT DOCUMENTS: DHS and DOS are accepting comments from tribes whose enrolled tribal members continue to cross the border for a traditional purpose. In the final rule, the Departments only propose to accept tribal enrollment documents that are deemed acceptable if members of the issuing tribe continue to cross the land border for a historic, religious or other cultural purpose. The enrollment card may only be used at a tribe's traditional border crossing and only acceptable so long as the tribe cooperates with the verification, validation and future enhancement of the document. If a tribe wishes to propose its enrollment card as an alternative at one or more border crossing points, the tribe must provide a detailed explanation why the proposed tribal enrollment card should be an acceptable alternative document to the U.S. Customs and Border Protection (CBP) for its members. Also required is an explanation of the traditional purposes of all such travel. DHS and DOS stated that each comment should explain the following. (Reprinted from text of the proposed rule)

- a. specifically identifying the federally recognized tribe;
- b. indicating the traditional destination or destinations across the border that are visited by members of the tribe;
- c. explaining in detail the purpose or purposes of all such travel;
- d. relating all such travel to traditional ethnic, religious, cultural or other activities of the tribe;
- e. indicating the frequency of the travel; and
- f. specifying the border crossing point or points which are generally utilized to travel to each destination.

Other detailed information required for submittal includes:

- If the cross-border travel is reciprocated by a tribe, community or band from Canada or Mexico, the United States tribe should fully explaining the connection with these groups and a complete description of all such travel into the U.S. from the related community.
- Qualifications for tribal enrollment, including adoption, and categories of information from tribal records that support a tribal enrollment document as an acceptable citizenship and identity document and the reliability of tribal records.
- Willingness to make available to CBP tribal enrollment records, at minimum, names, residences and birthplaces of enrolled tribal members, identity of parents of enrolled

tribal members who were not born in the U.S. and procedures followed by each tribe to document all such information.

- Specific features of each tribal enrollment card with a description of biometric and security features and an image of both sides of a sample card to be submitted for the record with each set of comments.
- Description of the issuance process used by tribes, such as how the document cannot be obtained improperly and other physical security features.
- Willingness of the tribe to provide this information on an on-going basis.

DHS and DOS are also considering possible alternative approaches for U.S. Native Americans that range from more restrictive to more flexible. Tribes are invited to comment on:

- If no special provision should be made for acceptance of U.S. Native American documentation.
- If there should be broader issuance of the American Indian Card now issued to members of the Kickapoo Tribes.
- If tribal enrollment cards whose members continue traditional border crossing should be accepted without any limitation on the border crossing points or points where each card is accepted.
- If tribal enrollment cards from all federally recognized tribes should be accepted at some or all border crossing points.

COMMENT SUBMITTAL: Comments must be identified by agency name and docket number USCBP-2007-0061 must be submitted through one of the following methods:

Federal e-Rulemaking Portal: <http://www.regulations.gov>

or

Mail to: U.S. Customs and Border Protection
Office of International Trade
Office of Regulations and Rulings
Border Security Regulations Branch
1300 Pennsylvania Avenue NW (Mint Annex)
Washington D.C. 20229

For further information the contact at the Department of Homeland Security is Colleen Manaher at (202) 344-3003. The contact at the Department of State is Consuelo Pachon at (202) 663-2662.

For information at the Inter Tribal Council of Arizona you may contact Alida Montiel at (602) 258-4822, Extension 1543.

Inter Tribal Council of Arizona
12/10/07