



# HAUDENOSAUNEE

MOHAWK - ONEIDA - ONONDAGA - CAYUGA - SENECA - TUSCARORA

## HAUDENOSAUNEE DOCUMENTATION COMMITTEE

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August 27, 2007

The Honorable Condoleezza Rice, Secretary of State  
The Honorable Michael Chertoff, Secretary of Homeland Security  
c/o 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

Re: Comments on Proposed Rule, Department of Homeland Security and Department of State, Dkt. # USCBP-2007-0061

Dear Secretary Rice and Secretary Chertoff:

The Haudenosaunee Documentation Committee (HDC) sends greetings to you and your staffs. The HDC is the official voice of the Grand Council of the Haudenosaunee (Six Nations Confederacy) on border crossing documentation issues. The Grand Council has mandated the HDC to work with both the United States and Canadian Governments regarding the Western Hemisphere Travel Initiative (WHTI). Specifically, the HDC is obligated to interface with the US and Canadian Governments regarding the political and technical development of the new Haudenosaunee ID cards and passports.

Before moving on, the HDC needs to address the issue of diplomacy. In our first treaty with the arriving Europeans, the *Gaswentha'* or Two Row Wampum Belt, is the agreement of mutual respect and non-interference. The offering of these comments and proposal does not constitute a violation of the Two Row. Rather, through these comments the HDC is maintaining and perpetuating diplomatic relations with another sovereign. According to the Haudenosaunee, this process is known as "Polishing the Covenant Chain" (reconfirming our nation to nation relationship) of the Two Row Wampum Belt.

The traditional Haudenosaunee Governments of the Onondaga, Seneca, Mohawk, Oneida, Cayuga and Tuscarora Nations offer these comments on the proposed rule regarding documents required for travelers departing from or entering in the United States at sea and land ports of entry within the Western Hemisphere, 7 Fed. Reg. 35088-35116.

## I. Background

The Haudenosaunee (or Six Nations Confederacy) is comprised of six sovereign indigenous nations: the Onondaga Nation, the Seneca Nation, the Mohawk Nation, the Oneida Nation, the Cayuga Nation and the Tuscarora Nation. Our government structures and processes are based on peace, equality, and unity and are set out in the *Gayanenhäsä'go:nah*, or Great Law of Peace. Over a thousand years ago, a spiritual messenger known as the Peacemaker led the five nations to come together in peace as a unified political, cultural, economic, and social confederacy. The Peacemaker also brought a message regarding behavioral conduct to uphold peace and honor. The Great Law of Peace prescribes a confederated democratic government of fifty *Hodiya:nehson'*, or chiefs, from the various member nations and clans. Through the Great Law, the Peacemaker empowered the women to choose the leaders of the clans. These leaders had to be confirmed by consensus, first by the clan, the nations, and then the Grand Council of the five nations. This law of consensus empowers each individual and family within the Confederacy to have a direct voice in the governing councils of the nations. The Peacemaker designated Onondaga as the central fire of this great union. He established peace, equity and unity among the original nations, and it was agreed that these nations would retain their autonomy and independence. They agreed to come together in the Grand Council to conduct affairs of state, both national and international, and to raise leadership as required. In 1722, the Tuscarora Nation became the sixth member of the Haudenosaunee.

The structure of this confederacy incorporated the principles of a bicameral government and established two great houses. The elder brothers are the Onondagas, Mohawks and Senecas, and the younger brothers are the Oneidas and Cayugas, and later the Tuscarora Nation. These two houses established a process of consensus building in a government operating under the consent of the people. It is the duty of the clan mothers to hold the titles of leadership and initiate the process by which the leaders are chosen. They also have the power of recall when necessary, thus assuring the balance of power between men and women. These checks and balances guarantee a democratic process that continues to flourish today by providing a government operating under the consent of the people. The leaders serve the interest of the nation and the people. They receive no compensation other than the continuity of their work. The Great Law requires that relations with nations outside of the Haudenosaunee be conducted peacefully and that certain diplomacy and protocols be followed as part of those relations.

The commitment of the Haudenosaunee and outside governments to respect the sovereignty and rights of one another is memorialized in the Two Row Wampum Belt, the first treaty agreement between the Haudenosaunee and European nations. Known in Haudenosaunee languages as *Gaswentha'*, the Two Row Belt shows a canoe and a ship traveling parallel down the same river of life, symbolizing that indigenous and non-indigenous nations will respect the way of life of the other, without interference or impairment. Haudenosaunee individuals are citizens first and foremost of our own nations and we do not see the international borders drawn by outside governments as dividing us. Nonetheless, the United States and Canada have unilaterally extended citizenship to our citizens as well. To us, the Two Row demonstrates that neither the United States and Canada nor the Haudenosaunee has the right to impose outside

laws on the other. Any requirement that Haudenosaunee citizens carry U.S. or Canadian passports would violate this principle.

Haudenosaunee governments at Onondaga, Tonawanda Seneca, Cayuga and Tuscarora are federally recognized by the United States, *see* 72 Fed. Reg. 13647-13652 (Mar. 22, 2007), and all Haudenosaunee nations, including the Mohawk Nation, have treaty relationships with the United States.<sup>1</sup> Our territorial holdings predate those of the United States and Canada, as well as their constituent states and provinces. Today, Haudenosaunee territories are surrounded by New York State, Wisconsin and the Provinces of Ontario and Quebec in Canada, and most member nations include several geographically distinct communities. We have held and occupied these lands before the arrival of Europeans, and the cohesiveness of Haudenosaunee communities today is largely due to the maintenance of unbroken political, cultural, spiritual and economic ties to our lands. Many Haudenosaunee territories are located on or near the boundary between the United States and Canada.

By their very nature, Haudenosaunee political, cultural, economic, and social structures require frequent travel to and from the various communities on both sides of the international border. In contemporary times, these structures also require our citizens to travel outside their communities to carry on their spiritual and cultural traditions as well as to carry out the business of daily life. Because of the location of Haudenosaunee communities on and near the border, this travel includes frequent border-crossing. In some cases, such border-crossing is required several times a day. For example, the Mohawk community of Akwesasne (pop. 7000) straddles the US/Canadian border, and Akwesasne Mohawks routinely cross back and forth over the border to go to work, take their children to school, obtain health care, and for other purposes. Due to the area's unique geography, some Mohawks living on the Canadian side of Akwesasne must even cross into and out of the United States in order to reach workplaces, schools, or relatives also located on the Canadian side.

These comments, and the proposal that Haudenosaunee documentation be accepted by the United States for border-crossing purposes, are respectfully offered by the Haudenosaunee as a whole, including those traditional Haudenosaunee governments and communities located on the United States and the Canadian sides of the international border.

## **II. Basis in U.S. Law for Haudenosaunee Border-Crossing Rights**

The Haudenosaunee legal and political relationship with the United States is defined by treaties made in 1784 (Treaty with the Six Nations, 7 Stat. 15, commonly known as the "Treaty

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<sup>1</sup>While the Haudenosaunee government of the Mohawk Nation (the Mohawk Nation Council of Chiefs) is not listed by the United States in the Federal Register, it is a successor in interest to the Mohawk Indians with whom the United States signed a treaty in 1796 (Treaty with the Seven Nations of Canada, 7 Stat. 55 (1796)) and the United States has intervened in ongoing litigation on behalf of the Mohawk Nation Council of Chiefs and two other Mohawk governments to vindicate rights preserved by that treaty. *See Canadian St. Regis Band of Mohawk Indians, et al., v. State of New York*, 82-CV-783 (N.D.N.Y.).

of Ft. Stanwix”) and 1794 (Treaty with the Six Nations, 7 Stat. 44, commonly known as the “Treaty of Canandaigua”), among others. The treaties confirm Haudenosaunee land rights, establish peace with the United States, and commit both the Haudenosaunee and the United States to policies of mutual respect.

Because many Haudenosaunee communities are “border communities,” protection of the right to freely pass the Canada-United States border is a longstanding concern of our nations. This right is protected by Article III of the 1794 Jay Treaty, which guaranteed “Indians dwelling on either side” of the international boundary the right “freely to pass and repass by land or inland navigation” into either Canada or the United States. 8 Stat. 116. *See McCandless v. United States ex rel. Diabo*, 25 F.2d 71 (3d Cir. 1928) (member of Six Nations Confederacy has right of free passage to enter the United States and is not subject to deportation).

The Jay Treaty, which confirmed a pre-existing aboriginal right, thus establishes a legal right to pass the settler-imposed borders without regard to country of origin and provides a basis for the proposed rule’s acceptance of Haudenosaunee-issued documentation for border-crossing purposes. In our view, the term “freely” in the Treaty means that burdensome documentation requirements cannot be lawfully imposed without our consent. This is the sense in which the term has been interpreted by federal immigration and customs authorities at the border, who have for many years accepted identification cards issued by the Haudenosaunee and our member nations (known as “Red Cards”) and Haudenosaunee-issued passports as sufficient evidence of identity for purposes of land crossings between the United States and Canada. This practice confirms that the Haudenosaunee rights under the Jay Treaty can be implemented fairly and reasonably, thus upholding the security interests of the United States.

A second legal authority supporting the continued US acceptance of Haudenosaunee documentation for border crossing is the 1794 Treaty of Canandaigua, 7 Stat. 44. That treaty confirmed Haudenosaunee land rights and established “peace and friendship” between the United States and the Six Nations (Haudenosaunee). Article VII specifically provided that when “complaint[s]” arise, they should be taken directly to the President or the Indian Affairs Superintendent, in which case “prudent measures shall then be pursued as shall be necessary to preserve our peace and friendship unbroken. . . .” This provision has multiple purposes, but its relevance here is the obligation on the part of the United States to refrain from imposing measures without Haudenosaunee consent and to work cooperatively with our leaders to resolve any complaints that may arise. The proposed rule’s provisions contemplating approval by DHS and DOS of Indian nation-issued documentation are an important first step toward the sort of “prudent measures” required by the treaty, and a consultative process of final approval of Haudenosaunee documentation would be an appropriate means of implementing these treaty provisions.

The third legal authority supporting United States acceptance of Haudenosaunee documentation for border-crossing purposes is Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments.” November 9, 2000, 65 Federal Register 67249-67252. The Executive Order obligates federal agencies that formulate and implement policies that have implications for Indian tribes and nations to “encourage Indian tribes to

develop their own policies to achieve program objectives” and “where possible, defer to Indian tribes to establish standards.” Section 3(c)(1) and (2). Where the agency has not yet decided to establish a federal standard, the Order obligates the agency to “consult with tribal officials as to the need for Federal standards and *any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.*” Section 3(c)(3) (emphasis added).

The proposed WHTI rule both implicates and is supported by these executive obligations. At issue here is the “prerogative and authority” of the Haudenosaunee nations and the Haudenosaunee as a whole to define our own citizenship and to develop a system for documenting the identity and citizenship of our people in a way that conforms to Haudenosaunee values and principles. The right of Indian nations to define their citizens is a bedrock principle of federal law, recognized and confirmed by the U. S. Supreme Court in *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). This attribute of sovereignty and self-governance is also supported by the federal policy of “self-determination” with respect to Indian tribes and nations, a policy that has been in effect since its enactment by President Nixon in 1970. These are precisely the circumstances the Executive Order is designed to address. It directs federal agencies to defer to tribal proposals and to consult with Indian nations about the alternatives they wish the agency to consider. The proposed rule would create the opportunity for DHS and DOS to fulfill the obligations outlined in the Executive Order, provided approval of Haudenosaunee documentation is achieved in a collaborative, consultative and consensual manner (see below).

### **III. Assessment of Proposed Rule and Standards for Acceptance of Indian Nation Documentation**

#### **A. Support for Framework of Proposed Rule**

The Haudenosaunee commend DHS and DOS for recognizing that the unique legal, political, cultural, economic, social and geographic position of native communities supports acceptance of indigenous nation documentation for land border crossing purposes. As original inhabitants of this continent present long before the United States borders were drawn, the Haudenosaunee nations have, since the establishment of U.S. borders, exercised our right to cross the borders as a central part of our culture. As noted above, federal law and policy support the continued exercise of this right.

Assuming it is properly implemented, the proposal by DHS and DOS to accept certain Indian nation documentation for use at land border crossing protects Haudenosaunee rights and promotes federal law and policy with respect to Indian tribes and nations. In addition, the proposal promotes the security interests of the United States, by supporting the efforts of indigenous tribes and nations – particularly those located near the border – to assist in securing the borders through management of their own citizenship rolls and documentation. indigenous tribes and nations share the interest of the United States in ensuring that their borders are secure and that their communities are not threatened by outsiders seeking unwarranted access.

Finally, the rule's provisions related to indigenous nation documentation would effectively and appropriately implement the requirements of the Intelligence Reform and Terrorism Prevention Act of 2004. As noted by DHS and DOS in the proposed rule, that act requires the Secretary of Homeland Security to designate passports or "other document, or combination of documents" as satisfactorily establishing identity and citizenship for purpose of entry into the United States. 8 U.S.C. § 1185 Note (Pub. L. 108-458, § 7209). The legislation also directs that the Secretary's plan for documentation "shall seek to expedite the travel of frequent travelers, including those who reside in border communities." § 7209(b)(1)(A).

The Haudenosaunee therefore strongly support the proposed rule's provisions allowing for approval of Indian nation documentation, including documentation issued by indigenous governments on behalf of indigenous communities based in the United States and in Canada.

## B. Areas of Concern

The proposal to allow Indian nation documentation for use at land border crossings is sound and should be part of the final rule issued by DHS and DOS. Nonetheless, we have serious concerns regarding certain details of the proposed rule, and request certain modifications prior to issuance of a final rule.

### 1. Limitation to Specific Purposes and Requirement to Detail Purposes

The proposed rule requires that "members of the issuing tribe continue to cross the land border of the United States for a historic, religious, or other cultural purpose," 72 Fed. Reg. at 35099, and asks that commenting tribes and nations "explain in detail the purpose or purposes of all [cross-border] travel." *Id.* As DHS and DOS have suggested, *id.* at n.67, the Haudenosaunee qualify under these terms because Haudenosaunee people reside on both sides of the border and continue to cross it for traditional purposes. In a general sense, all Haudenosaunee border crossings have a cultural purpose because travel between and among the various communities that comprise the Six Nations Confederacy, and to and from these communities to other points where members can fulfill their spiritual, economic, social, and political needs, is all linked to the geographically dispersed culture of the Haudenosaunee. Nonetheless, the requirement that "all [cross-border] travel" be described and the suggestion in the proposed rule that such travel must be linked to "historic, religious, or other cultural purposes" is susceptible to an unreasonably narrow interpretation. Moreover, such a rule would be extremely difficult to implement on the ground. Because a rule of that nature would give border officials broad power to determine whether particular travel qualifies as "historic, religious or cultural," the rule would impermissibly intrude on matters that are internal to the Haudenosaunee and our citizens.

Interpreters of the proposed rule might argue, for example, that a daily trip across the border to take a child to daycare or to travel to a modern-day job had no historic, religious, or cultural basis. As noted above, many Haudenosaunee citizens make such trips several times a day, particularly in the Mohawk community of Akwesasne, which lies on the St. Lawrence River and spans the international border, two New York State counties, and two Canadian provinces.

The right to make all these trips across the border “freely” is protected by the Jay Treaty regardless of the exact nature of the travel.

These requirements not only suggest unacceptable limitations on cross-border travel, as discussed above, but also impermissibly intrude into internal matters of the Haudenosaunee and our citizens. There is no justification for the United States government seeking to determine in advance the nature of every trip taken across the border by a member of an indigenous (or any other) community or the frequency of such travel, and it is not possible in any event for the Haudenosaunee to document the purpose of every such trip. Furthermore, certain religious and cultural practices that may relate to border-crossing are private and in some cases sacred matters that cannot be shared publicly.

For these reasons, the Haudenosaunee suggest that modifications be made to the final rule. The proposed rule should be modified to delete requirements 1(c), 1(d), and 1(e), that tribes and nations seeking approval of their documentation for border-crossing submit detailed information regarding the purposes of “all such travel,” relating “all such travel” to traditional ethnic, religious, cultural, or other activities of the tribe, and indicating the frequency of such travel.

Deletion of requirements 1(c), 1(d), and 1(e) is also supported by the fact that this information cannot practically be operationalized by CBP or DHS. CBP could not and should not be expected to enforce any requirement that each trip across the border by a Haudenosaunee citizen be for a particular, pre-approved purpose, or that the frequency of such trips correspond to any estimate the Haudenosaunee might provide to DHS in advance. Indeed, any attempt by CBP to do so would unduly burden Haudenosaunee rights to travel, overtax CBP, and delay travel by all seeking to cross the border, at significant social, economic and political cost.

## 2. Limitation to Certain Locations

The proposed rule states that Indian nation identification documents “may only be used at that tribe’s traditional border crossing points,” 72 Fed. Reg. 35099. The proposed rule requires that tribes and nations seeking approval of their documentation “indicate the traditional destination or destinations across the border that are visited by members of the tribe” and “specify the border crossing point or points which are generally utilized to travel to each such destination.” *Id.*

As noted below, this language does not necessarily limit the locations at which Haudenosaunee citizens would be allowed to cross the border, because Haudenosaunee tradition requires that such border crossing take place for a wide range of cultural, spiritual, political, and economic purposes wherever and whenever such travel is required. Free passage of this kind historically exercised by the Haudenosaunee is also protected by the Jay Treaty, which does not discriminate among reasons for or locations of cross-border travel. *See* 8 Stat. 116. For these reasons, although particular border crossing points are especially well-traveled by

Haudenosaunee travelers, Haudenosaunee tradition and culture, as well as federal law, supports travel at all border-crossing points.

Nonetheless, the proposed rule could be read to suggest that even indigenous nations like the Haudenosaunee with well-established histories of crossing the border at a wide range of locations might be limited to locations deemed “traditional” under a narrow reading. This would be discriminatory and unacceptable. The Haudenosaunee thus suggest that language stating that Indian nation documentation may only be used “at [the] tribe’s traditional border crossing points” be eliminated, and that the requirements listed in 1(b) and 1(f) be deleted from the final rule.

### 3. Limitation to Rule-Making Process and Lack of Consultations

The Haudenosaunee have great concern about the process the proposed rule seeks to establish for the approval of Indian nation documentation for border-crossing purposes. According to the rule, DHS proposes to “consider [tribal enrollment] documents for the final rule.” 72 Fed. Reg. at 35099, para. G(1), and refers to “documents that may be found acceptable and so designated in the final rule.” *Id.* The proposed rule states that “the record of rulemaking will need to detail the enrollment qualifications employed by each United States tribe in order to propose the acceptance of the tribe’s enrollment document.” *Id.* In addition, the rule states that “[t]ribes will only have the opportunity to participate in the shaping of the standards for tribal documents through this rulemaking” and that “any tribe that is considering submitting the information outlined above [the information required in order for tribal documentation to be approved] must do so through this rulemaking process, as outlined in this NPRM.” 72 Fed. Reg. 35100.

At the same time, the proposed rule puts forward the intention of DHS and DOS to “consider, as appropriate, documents such as State driver’s licenses that satisfy the WHTI requirements by denoting identity and citizenship. These documents could be from a State, tribe, band, province, territory, or foreign government if developed in accordance with pilot program agreements between those entities and DHS.” 72 Fed. Reg. At 35095-35096, para. IV(D). The proposed rule thus suggests that indigenous nations may apply to have their documentation approved for border-crossing purposes either through their comments on the proposed rule (as the Haudenosaunee do by this document) or as a part of a pilot project to be agreed to by DHS at some later date.

As noted above, DHS and DOS are obligated pursuant to Executive Order 13175 to consult with Indian tribes and nations on regulatory initiatives, like this one, with implications for tribes. The Executive Order gives Indian nations and tribes an enhanced role in the regulatory process, beyond that of a member of the general public submitting comments on a proposed rule under the provisions of the Administrative Procedures Act. Although the Haudenosaunee commend DHS and DOS for seeking to initiate a process or processes by which Indian nation documentation may be approved for border-crossing, any such process must include consultation. Indeed, in order to ensure that all of DHS and DOS’s concerns are



addressed, the Haudenosaunee (and any other indigenous tribe or nation seeking approval of its documentation) will have to engage in a collaborative and consultative process with the agencies, just as Washington State and Vermont have in crafting their recently-announced enhanced driver's license pilot projects. A single chance to submit information as a part of this rule-making is insufficient, particularly given DHS and DOS's myriad of concerns, the importance of ensuring proper security and information-sharing going forward, and the dynamic nature of the technology that might or might not be a part of upgraded Indian nation documentation.

For this reason, the Haudenosaunee strongly urge DHS and DOS to conduct consultation meetings with the Haudenosaunee and all other interested indigenous tribes and nations prior to issuance of a final rule on approval of Indian nation documentation. Only through such consultation will we and the federal government be able to arrive at a mutually agreeable system that provides the greatest security and compatibility with other systems possible, and that upholds the consultation responsibilities of the agencies.

#### 4. Timing/Relationship to January 31, 2008 New Requirement

The proposed rule states that "it is the intention of DHS to end the routine practice of accepting oral declarations alone starting January 31, 2008," when DHS intends, "under its discretionary authority," to "expect the satisfactory evidence of U.S. or Canadian citizenship to include either of the following documents or groups of documents: (1) A document specified in this NPRM as WHTI-compliant for that individual's entry; or (2) a government-issued photo identification document presented with a birth certificate." 72 Fed. Reg. at 35096, para. IV(E)(1). According to the rule, the implementation of the "full requirements" of the land and sea phase of WHTI is expected to occur during the summer of 2008. *Id.*

It is not clear from the proposed rule whether January 31, 2008 will mark the start of a new documentation requirement applicable to every individual seeking to cross the land borders (for the most part, a requirement of a government-issued ID together with a birth certificate or of a passport or passport card) or whether it is DHS's intention that, beginning on that date, oral declarations must be bolstered in various circumstances with other documents, including but not limited to, those listed. Further, it is not clear whether or how any change in policy in January 2008 will impact Indian tribes and nations seeking to have their documentation approved for border-crossing purposes, if such approval has not yet occurred or if Indian nation documentation has been approved but is not yet in widespread circulation.

The Haudenosaunee strongly urge DHS and DOS to clarify this aspect of the rule and to preserve the status quo for Haudenosaunee travelers by continuing to allow use of current Haudenosaunee documentation until upgraded documentation is approved by DHS and brought into widespread circulation among Haudenosaunee citizens. If DHS approval of Haudenosaunee documentation is contingent on upgrades to the current Haudenosaunee ID system, this will require a grace period of at least a year and probably more from the time of DHS approval. Regardless, no changes to current requirements should be made with respect to Haudenosaunee

travelers in January 2008. That is, Haudenosaunee travelers should continue to be allowed to cross the borders using their “Red Card” identification or Haudenosaunee passport.

Short-term preservation of the status quo for Haudenosaunee travelers is supported by (1) the likelihood that the Haudenosaunee will be engaged with DHS in a cooperative process to bring online secure Haudenosaunee documentation that meets WHTI requirements; (2) by the protections for Haudenosaunee border-crossing already established in federal law (see above); and (3) by the fact that, due to Haudenosaunee principles of citizenship, sovereignty, and self-governance, a significant percentage of Haudenosaunee citizens do not have birth certificates. Many Haudenosaunee citizens were born by house birth and would have an extremely difficult time obtaining such documentation issued by outside authorities. While ID cards and passports issued by the Haudenosaunee would satisfy a requirement that travelers produce a “government-issued ID,”<sup>2</sup> any requirement that Haudenosaunee citizens carry and produce a birth certificate would be extremely burdensome and difficult to meet. Allowing continued use of current Haudenosaunee documentation after January 31, 2008, would comport with the stated intent of DHS and DOS to “end the routine practice of accepting oral declarations alone.” 72 Fed. Reg. at 35096, para. IV(E)(1).

In addition, the Haudenosaunee urge DHS and DOS to ensure that sufficient time is allotted prior to final implementation of the land border crossing rule. As described below, we intend to upgrade our documentation such that it is even more secure and fully compatible with the technology employed by DHS and CBP at the borders. This will require time for planning and startup and a significant financial commitment from the Haudenosaunee. It is therefore imperative that the results of various tests, including the pilot project to be led by Washington State to test enhanced documentation, be available to DHS and the Haudenosaunee before final decisions on technology are made. We are prepared to discuss this with DHS and ready to expedite the security technology to be agreed upon.

#### **IV. Proposal for Acceptance of Haudenosaunee Documentation as WHTI-Compliant for Land Border Crossing**

Through these comments, the Haudenosaunee propose that DHS and DOS approve Haudenosaunee documentation as compliant with WHTI and IRTPA 7209 for the purposes of land border crossings. We provide below the information requested by DHS and DOS in the proposed rule. Should DHS and DOS find that further information is required, we ask that we be given an opportunity, preferably through a collaborative, consultative and consensual process, to provide that information prior to issuance of a final rule.

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<sup>2</sup>There is no question that indigenous governments are governments for the purposes of this requirement. DHS and DOS have acknowledged the status of Indian tribe and nation governments in the proposed rule through the inclusion of “tribe[s]” and “band[s]” in the list of governments that might issue documents to be considered by DHS and DOS as WHTI-compliant in the future, 72 Fed.. Reg. 35096 at para. 4(D), and through the explanation of the special relationship between the federal government and Indian tribes provided at 72 Fed.. Reg. 35096, para. G n.65.

A. Explanation of Haudenosaunee Border Crossings

The proposed rule lays out six categories for which information is required related to traditional Indian nation border-crossing. 72 Fed. Reg. 35099, para. V(G)(1)(a)-(f), see categories in italics below. The Haudenosaunee respond as follows:

*Each comment should explain the traditional border crossings of that tribe by:*

*a. specifically identifying the federally recognized tribe*

As noted above, the Haudenosaunee (or Six Nations) maintain a treaty relationship with the United States. The Haudenosaunee is comprised of six sovereign indigenous nations: the Onondaga Nation, the Seneca Nation, the Mohawk Nation, the Oneida Nation, the Cayuga Nation and the Tuscarora Nation. Haudenosaunee governments at Onondaga (the Onondaga Nation Council of Chiefs), Tonawanda Seneca (the Tonawanda Band of Seneca Indians), Cayuga (the Cayuga Nation Council) and Tuscarora (the Tuscarora Nation Council of Chiefs) are recognized by the United States, and all Haudenosaunee nations, including the Mohawk Nation, have treaty relationships with the United States.<sup>3</sup>

*b. indicating the traditional destination or destinations across the border that are visited by members of the tribe*

The majority of Haudenosaunee cross-border travel is within traditional Haudenosaunee territory, from Vermont in the east (south of Montreal) to the Detroit-Sarnia border in the west, and including Haudenosaunee communities in Wisconsin. Within this area, the most frequent crossing takes place at Akwesasne, along the Niagara frontier, and along the St. Lawrence River. For example, approximately 70% of the users of the Seaway International Bridge are Akwesasne Mohawks. This includes 37 school buses that travel each day from St. Regis, Quebec to Cornwall Island and Cornwall, Ontario. Common destinations north of the Canadian border include the Mohawk communities at Kahnawake, Kanehsatake, and Tyendinaga; the Oneida of the Thames community; and the Six Nations of the Grand River community. Haudenosaunee citizens living north of the Canadian border commonly travel to the Haudenosaunee communities at Onondaga, Tuscarora, Tonawanda, Kanatsiohareke, and Oneida, among others. Traditional Haudenosaunee border-crossing, however, embraces a much larger range of destinations.

Especially because of longstanding economic activities spanning the border, there are Haudenosaunee communities of an informal nature across North America, and traditional historical contacts between and among Haudenosaunee and non-Haudenosaunee communities on both sides of the border across the continent, particularly in Wisconsin and Oklahoma, but also

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<sup>3</sup> See footnote 1.

including non-Haudenosaunee Indigenous communities in the upper Northwest and in Mexico. The Haudenosaunee have long conducted cross-border travel for diplomatic and cultural purposes, and border crossing outside of traditional Haudenosaunee territory has always been and continues to be common. For example, there are some 1,000 Haudenosaunee citizens living in the Canadian city of Vancouver who regularly utilize western border crossing points for a variety of purposes.

*c-d. explaining in detail the purpose or purposes of all such travel and relating all such travel to traditional ethnic, religious, cultural or other activities of the tribe*

As discussed above, the very act of traveling freely among the Confederacy's communities and throughout our historic territory is an essential part of Haudenosaunee culture and tradition, as well as a necessary element of Haudenosaunee economies and daily life. Particularly in communities that span or abut the border, the full range of purposes of border-crossing travel cannot reasonably be recounted, but various kinds of travel may serve as examples.

Haudenosaunee communities provide North America with expert structural steel and ironworkers, who have helped build most of the continent's tall buildings, including the World Trade Center. Many of these ironworkers travel across the border to work during the week, returning to their home communities and families on weekends. These workers are part of an international union that makes it possible for them to work throughout North America and around the world.

The annual practice of renewing the *Gaihwiyoh*, the "Code of Handsome Lake", is one that involves travel by spiritual leaders to all Haudenosaunee communities, on both sides of the border. Haudenosaunee government, including its standing committees, continues to work on both sides of the border. The Standing Committee on Burials and Burial Regulation, for example, works with museums and archaeologists to secure the protection of burials and the return of sacred and funerary objects, pursuant to the *Native American Graves Protection and Repatriation Act*. The Haudenosaunee Environmental Task Force seeks to protect the natural environment, working in partnership with federal, state and Canadian provincial agencies where appropriate. In council and in other aspects of government, the Haudenosaunee do not distinguish between "Canadian" and "American" people, lands or communities.

In early history, the Haudenosaunee traveled across the continent. There are Haudenosaunee communities throughout the hemisphere. In the twentieth century, many of our people, particularly lacrosse players (the game of lacrosse is our gift to the world), settled in Vancouver and the state of Washington. Additionally educational, language activities and conferences, cultural exchanges, and athletic events necessitate travel. In social activities and athletic events, the Haudenosaunee are also one people. Lacrosse, for example, binds the people together as a sacred ceremony, as a community sport, and even as a professional sport involving many Haudenosaunee players. The Iroquois Nationals, the official lacrosse team sanctioned by the Haudenosaunee, compete against other nations of the world as a team composed of

Haudenosaunee players from all communities on both sides of the U.S. and Canadian border. Youth and adult leagues include teams on both sides of the border who travel on a regular basis to compete with one another.

There is also a long history of intermarriage among Haudenosaunee communities, of joint fishing and hunting expeditions for spiritual and subsistence purposes, and of medicine-gathering and sharing across and within Haudenosaunee communities on both sides of the border. These traditions continue and continue to require frequent travel across the border. We also cross borders in times of emergency. Unfortunately, we have sometimes been denied access when trying to deliver food and other emergency supplies to help our people and others after natural disasters. This happened during a bout of recent ice storms in the northeast, as well as after Hurricane Katrina in 2005 and hurricanes in Florida in 2006.

In addition, Haudenosaunee leaders are actively engaged in international diplomacy at the United Nations and the Organization of American States aimed at promoting and protecting the rights of indigenous peoples, and routinely cross the borders in furtherance of this work.

*e. indicating the frequency of the travel*

As indicated throughout these comments, Haudenosaunee border-crossings are frequent, with some citizens crossing multiple times per day and many crossing multiple times per week.

*f. specifying the border crossing point or points which are generally utilized to travel to each destination*

A significant portion of Haudenosaunee border-crossing occurs within the traditional Haudenosaunee territories from Vermont (south of Montreal) in the east to the Detroit-Sarnia border in the west. However, as noted above, Haudenosaunee traditional border-crossing occurs at points all across the United States borders, both north and south.

**B. Haudenosaunee Identification Cards**

As noted above, the Haudenosaunee have issued their own identification cards for decades, and these “Red Cards” have been and continue to be accepted by CBP for entry into the United States. In addition, the Haudenosaunee have long issued passports for international travel. Haudenosaunee passports have been accepted for international air travel and by CBP for entry into the United States at the land borders. The Haudenosaunee are working to upgrade this documentation in compliance with international standards and are conducting discussions with various manufacturers regarding technical specifications, information infrastructure, and other matters. We seek to clarify in cooperation with DHS, DOS, and CBP any and all technical requirements for upgraded documentation prior to making final decisions.

During this short-term process of cooperative planning, the Haudenosaunee ask DHS and

CBP to ensure that current Haudenosaunee documentation, including both “Red Cards” and passports, continue to be accepted for land border crossing. The sections below describe Haudenosaunee plans for upgraded documentation, subject to modifications based on DHS concerns or other factors. The specifications outlined below are examples of what the Haudenosaunee might do and are not intended to represent binding commitments by the Haudenosaunee, until and unless agreement is reached between the Haudenosaunee and DHS/DOS/CBP regarding the specifications that are necessary and appropriate. We are also willing to discuss with DHS the possibility of production and distribution of interim cards that do not incorporate the full range of security measures described below. Such an interim card could be produced and distributed to Haudenosaunee citizens in a much shorter time frame than could more technologically elaborate cards.

#### 1. Information on the Cards and Information-Sharing

The information on the Haudenosaunee identification card and upgraded passport will at a minimum conform with the standards of the International Civil Aviation Organization (ICAO)<sup>4</sup> for machine-readable travel documents.

The information on the card and passport will include the person’s English name, date of birth, place of birth, residence, Indian nation, date of issue and expiration of the card/passport, a unique registration number, and a digital photograph, among other things. This information will be shared with CBP and the government of Canada on an ongoing basis. In addition, the Haudenosaunee may share with CBP on an ongoing basis the identity and birthplaces of the parents of any Haudenosaunee citizens not born in the United States, such that CBP may verify the citizenship of each Haudenosaunee document holder. These categories of information support acceptance of Haudenosaunee documentation as establishing identity and citizenship. In any case in which CBP has concerns about the citizenship or identity of any individual, the Haudenosaunee are willing to discuss further information that may be available to address CBP concerns.

Other information (but not limited to the following) that may be shown on or stored in the card/passport is relevant to the Haudenosaunee for internal purposes only: a person’s Haudenosaunee name, clan, and community. This information will not be shared directly with CBP but will be collected and stored by the Haudenosaunee as a part of the system of

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<sup>4</sup>The International Civil Aviation Organization, an agency of the United Nations, codifies the principles and techniques of international air navigation and fosters the planning and development of international air transport to ensure safe and orderly growth. The ICAO Council adopts standards and recommended practices concerning air navigation, prevention of unlawful interference, and facilitation of border-crossing procedures for international civil aviation.

documentation security.

Ongoing cooperation with respect to verifying and validating Haudenosaunee documentation would begin when a new card or passport is issued. At the same time as the direction to print a card or passport is transmitted from the Haudenosaunee central registry to the production facility, the central registry would transmit the same information to CBP/DHS.

In addition, the Haudenosaunee will provide a contact number for CBP/DHS officials to call if any question arises about the validity of a specific card or passport and will make available, in the event of a security concern, information of the supporting documents that supported issuance of the card or passport.

## 2. Security of the Cards and Passports

Subject to DHS technical requirements, the cards may include any or all of the following features to prevent duplication, counterfeiting and modification: microprinting, a hologram, biometric identification, ultraviolet fluorescent inks, and several numbers linked to the registration number that will produce a confidential algorithm. The cards may also be laser-engraved, so that the information is embedded in the polycarbonate plastic of the card itself and cannot be modified. The card would have an optic stripe encoding the information listed above, and could also include an RFID-1 or RFID-2 microchip, contingent on the prevalence of compatible card readers at border-crossing points and on CBP requirements. Subject to DHS requirements, upgraded passports could include most of these security features as well.

The application, issuing and recording process for Haudenosaunee cards and passports will also meet a high standard of security and of respect and protection for personal privacy. Information will be gathered at local offices of each Nation member of the Haudenosaunee, but stored only in a central secure repository, and not at local offices. Access to personal information will be carefully regulated. Haudenosaunee information gathered in the issuing of a card or passport can be shared on a reciprocal basis with the United States for security purposes only. All the information embedded in the card's or passport's microchip would be readable by a reader at the issuing office. The chip will not be "hackable" or modifiable.

## 3. Security of Manufacturing

A single secure manufacturing facility will produce the upgraded cards and passports. No blank cards or passport booklets will be allowed to leave the manufacturing facility. The Haudenosaunee are willing to work with DHS and with the manufacturer to ensure that the facility meets any applicable federal standards for the issuance of secure documents. Each of the manufacturers with whom the Haudenosaunee has discussed production of upgraded documentation has a proven record of production of such secure documents for federal and international clientele.

## 4. Security of Issuance

Any identification system is only as secure as the documents used to prove a person's eligibility and as the office and staff who process the application. That is, if an applicant produces false identification, or if the system permits the issuance of documents based on inadequate evidence, the system will not be secure. Also, if there is any room for abuse or corruption in the issuing offices, the system will also not be secure.

The Haudenosaunee have long issued documentation to their citizens in a secure and trustworthy manner and seek to strengthen this system as a part of the Haudenosaunee plan for upgraded documentation. A cornerstone of this system is the two-part requirement of (a) documentation and (b) approval at two separate levels of any application for documentation prior to issuance of a card. This approval requirement applies today and will be applied in the future to prevent unauthorized individuals from getting cards or passports and to prevent documentation from being issued with inaccurate information. The issuance system is also characterized by a combination of local offices, at which information may be gathered and applications processed, and a central registry, at which information will be stored and transmitted to the manufacturer and to DHS/CBP.

(a) Documentation Requirement

A person who applies for a Haudenosaunee identification card or passport must produce, with the application, at least two other secure identification documents to confirm identity. These documents will be scanned by the application office and stored in the Haudenosaunee central registry. Acceptable documents include but are not limited to:

- Current valid Haudenosaunee Passport
- Current valid and verifiable Haudenosaunee Red Card
- Certificate of Indian Status issued by the Government of Canada
- Driver's License
- Birth certificate
- Letter of authorization and verification from the individual's nation

If an applicant cannot provide sufficient secure documentation, the applicant must seek a decision by the nation's Council of Chiefs confirming the person's citizenship, and submit an official copy of that decision with the application.

(b) Approval Requirement

To ensure the accuracy and legitimacy of the identification cards, applications are approved in two stages. First, an administrator in the local Nation office that processes the application will certify that the relevant documentation has been provided and inspected and will approve the application for submission. This approval will be accompanied by fingerprints or other biometric confirmatory data. Second, at least one member of the Council of Chiefs of the Nation of the applicant, is required. This approval will also be securely transmitted to the central



office, accompanied by fingerprints or other biometric confirmatory data.

#### 5. Eligibility / Enrollment

Haudenosaunee citizenship principles are set out in the *Gayanensä'go:nah*, the Great Law of Peace, along with the principles and structure of traditional government and decision-making. Within the Haudenosaunee, each member Nation determines its own citizenship. (While some indigenous tribes and nations refer to this as enrollment or membership, the Haudenosaunee use the term citizenship). Under the Great Law of Peace, Haudenosaunee citizenship, including Nation and clan, is passed down by the mother. Those whose mothers are Haudenosaunee citizens are thus Haudenosaunee citizens themselves. Others, for example, those whose fathers but not mothers are Haudenosaunee citizens, may become citizens as well under certain circumstances, particularly north of the border, where the Canadian *Indian Act* seeks to impose patrilineal membership criteria on indigenous nations.

Adoption of individuals lacking strong and lasting blood and/or social ties to Haudenosaunee communities is virtually non-existent. A very limited number of adoptions do take place under circumstances in which an individual is biologically related to a Haudenosaunee citizen (but perhaps lacks a clan) or is a longstanding member of a Haudenosaunee community.

Citizenship records and information are maintained and strictly guarded by each nation and accessible only to a small number of individuals authorized by that nation's Council of Chiefs.

#### V. Conclusion

Subject to the concerns outlined above, the Haudenosaunee support the provisions of the proposed rule allowing for approval of indigenous nation documentation and ask that DHS and DOS consider, at an appropriate time, issuance of a final rule approving Haudenosaunee documentation for that purpose. The Haudenosaunee encourage DHS and DOS to hold consultations with the Haudenosaunee in order to determine how best to satisfy the concerns of all parties related to upgraded Haudenosaunee documentation. In the meantime, the Haudenosaunee ask that DHS and DOS continue to accept Haudenosaunee Red Cards and passports for land border crossing.

Oneh,



Karl Hill, Chair  
Haudenosaunee Documentation Committee

Enclosures