



Kootenai Tribe of Idaho

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

Re: Docket # USCBP-2007-0061

The Kootenai Tribe of Idaho (“Kootenai Tribe”) respectfully submits these comments on the notice of proposed rulemaking for the Western Hemisphere Travel Initiative (“WHTI”). The rulemaking proposes the specific documents that, as early as January 2008, and no sooner than 60 days from publication of the final rule, U.S. citizens and nonimmigrant aliens from Canada, Bermuda and Mexico will be required to present when entering the United States at sea and land ports-of-entry from Western Hemisphere countries.

The Kootenai Tribe hereby requests government-to-government consultation with the Department of Homeland Security U.S. Customs and Border Protection and the Department of State to discuss the impacts of the WHTI and the related rulemaking on the Tribe’s rights and interests under its inherent authority as a sovereign Tribal government and its rights under the Jay Treaty and other treaties and laws. The Tribe invites representatives of the agencies to the Kootenai Mission to meet with Tribal Council and members as soon as possible and prior to implementation of the proposed changes.

The Kootenai Nation (also known as Kootenay or Ktunaxa Nation) consists of seven modern bands, including two in the United States¹ and five in Canada². The bands that comprise the Kootenai Nation have inhabited portions of Idaho, Montana, Washington, British Columbia and Alberta since time immemorial. Frequent intermarriage between

¹ Kootenai Tribe of Idaho and Confederated Salish and Kootenai Tribes of the Flathead Reservation.

² St. Mary’s Band, Lower Kootenay Band, Tobacco Plains Band, Columbia Lake Band and Shuswap Band.

the bands continues to be common, and most Kootenai have relatives on both sides of the international boundary between the United States and Canada.

The Kootenai Tribe of Idaho is a U.S. federally-recognized Indian tribe organized under its Constitution and By-Laws ratified by the adult members of the Kootenai Tribe of Idaho on April 10, 1947 and approved/signed by the Acting Commissioner of Indian Affairs on June 16, 1947, as amended. The Kootenai Tribal Council, consisting of six persons and the Chairperson, is empowered as the governing body to act for and on behalf of the Kootenai Tribe. *Constitution of the Kootenai Tribe of Idaho*, Article III.

The government offices of the Kootenai Tribe of Idaho are headquartered at the Kootenai Mission near Bonners Ferry, Boundary County, Idaho, approximately fifteen miles from the border. The Tribal membership is 164 people, fifteen to twenty of whom hold dual U.S. and Canadian citizenship. All members have close relatives residing in Canada. It is common practice for both U.S. and Canadian Kootenai to cross the border on a daily basis to visit relatives, for religious and cultural purposes and for other purposes.

Historically, Kootenai citizenship cards issued by the Tribal and Band governments have been sufficient to cross the international boundary. The changes proposed by the WHTI and the rulemaking, therefore, will have a considerable detrimental impact on Kootenai ability to maintain close familial ties, exercise religious and cultural practices and participate in other activities that they routinely engaged in before establishment of the international boundary.

The Kootenai Tribe welcomes the Departments of Homeland Security (“DOH”) and State’s (“DOS”) consideration of tribal enrollment documents for the final rule. As described above, Kootenai cross the border on a daily basis to visit relatives, for cultural and religious purposes and for other purposes. The usual destinations for such visits are the headquarters of the Canadian Bands and cultural and religious locations within the Kootenai aboriginal territory.

The Kootenai Tribe understands that DOH and DOS request detailed information about the purpose or purposes of all such travel and how such travel relates to traditional ethnic, religious, cultural activities. The majority of border crossings are to maintain familial ties with close relatives in Canada as the Kootenai Nation has done since time immemorial. Other reasons for crossings include shopping for goods found only in Canada, hockey practice and other activities.

Kootenai religion and culture forbids the disclosure of religious sites and religious practices, however, and requests for such detailed information are inappropriate in this context. Thus, the Kootenai Tribe does not disclose such information in these comments.

The border crossing points generally utilized by Kootenai include Chief Mountain, Roosville, Kingsgate/Eastport, Flathead, Nelway/Metaline Falls, Waneta/Boundary and Rykerts/Porthill. The Kootenai Tribe maintains, however, that it would be inappropriate to limit its ability to utilize Kootenai citizenship cards to these border crossings. Kootenai

commonly travel to other parts of the United States and Canada for intertribal events such as powwows and conferences. Tribal members should be allowed to use their Kootenai citizenship cards at any crossing point into and from Canada under the Kootenai Tribe's inherent rights and under the Jay Treaty between Great Britain (on behalf of Canada) and the United States.

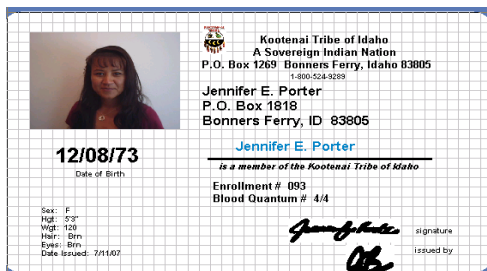
It would be appropriate, however, to specially train border officials at the crossing points generally utilized by Kootenai in cultural understanding. The Canadian Bands entered into a Memorandum of Understanding with the Canadian Department of National Revenue ("Revenue Canada") to work cooperatively to implement practical solutions and initiatives to foster understanding between Ktunaxa citizens and border and customs officials. The Kootenai Tribe intends to approach Revenue Canada to join the Memorandum of Understanding and expresses its desire to enter into a similar understanding with U.S. officials.

Cross-border travel is reciprocated by members of the Canadian Bands. Such travel is for the same purposes as described above for U.S. members.

Enrollment in the Kootenai Tribe is limited to Indians whose names appear on the official census roll of the Kootenai Tribe on September 25, 1995 and all descendants born to members of the Kootenai Tribe on such roll that possess at least one-fourth degree Kootenai Nation blood. *Constitution and Bylaws of the Kootenai Tribe of Idaho*, Article II, Section 1. The Tribal Council also has the power to make rules governing adoption of new members. *Id.*, Section 2. The rules adopted by the Tribal Council limit eligibility to persons who possess at least one-fourth degree Kootenai Nation blood and have maintained a permanent residence in Boundary County, Idaho for not less than fifteen (15) years or who have maintained close social and economic ties with the Kootenai Tribe of Idaho for not less than fifteen (15) years. *Law and Order Code of the Kootenai Tribe of Idaho*, Section 9-5.01. Persons who meet these qualifications, as determined by the Kootenai Tribal Council, become adopted members of the Tribe upon approval of the General Membership of not less than seventy percent (70%) of the eligible voters at a meeting called for the purpose of ruling on adoption applications.

Required Tribal citizenship (enrollment) records include birth certificates issued by the United States or Canada that list the child's Kootenai parent. Thus, such citizenship records can be used to verify U.S. or Canadian citizenship.

Kootenai Tribal citizenship cards contain digital photographs of the member. The cards are created using a computer located on a separate server and accessible only by the secretary for the Tribal Council and the Tribal Chairperson. Thus, the citizenship cards are reliable and secure.



[An example of a Kootenai Tribal Citizenship Card (front and back)]

The Kootenai Tribe is willing to release its citizenship list (roll) and to discuss additional information the United States may require, provided privacy issues can be addressed. The Kootenai Tribe is also willing to assist Customs and Border Protection (“CBP”) in verifying the procedures followed to document information contained in Tribal records. Such information can be provided on an ongoing basis.

Enhancement of Kootenai Tribal citizenship cards to ensure security is a Kootenai Tribal goal and we are willing to work with CBP to enhance the citizenship cards in the future. Additionally, the Kootenai Tribe has begun discussions with the other Tribes and Bands of the Kootenai Nation to discuss uniform citizenship cards with appropriate security measures in place.

A major concern, however, is the budget impact of such enhancements on the limited Kootenai Tribal government budget. The Kootenai Tribe, therefore, would like to discuss with the Departments the available options for security enhancements given budget constraints. The Kootenai Tribe recognizes the State of Idaho’s similar concerns regarding the cost of enhancement of State of Idaho identification cards and also urges the Departments to work with the State of Idaho to resolve these issues.

The Kootenai Tribe also wishes to comment on the impact to the Kootenai Tribal and Boundary County economy. The Kootenai Tribe’s limited tax base makes it difficult to raise government revenue through taxation. Thus, the Kootenai Tribe has established economic ventures to create revenue to supplement the funds it receives from the United States. The primary source of Tribal revenue is the Kootenai River Inn, Casino and Spa (“KRI”) located in Bonners Ferry, Idaho. Approximately 45%-55% of KRI patrons come from Canada.

At the direction of Kootenai Tribal leadership, KRI began a promotion earlier this year to encourage Canadian patrons to obtain passports in anticipation of the new requirements. The Kootenai Tribe remains concerned, however, that the new requirements will impact its ability to raise revenue for Kootenai Tribal government programs.

In light of the foregoing impacts to the Kootenai Tribal and Boundary County economy, the Tribe respectfully requests, in addition to government-to-government consultation, the Departments of Homeland Security and State to meet with the Tribal government and

the Boundary County community to discuss the potential effects of the Western Hemisphere Travel Initiative and options available to the community to mitigate for such effects.

The Kootenai Tribe of Idaho remains committed to working with the United States to ensure that its rights are protected and impacts to its families, culture and religion are avoided, while ensuring the security of the United States and Canada. The Kootenai Tribe looks forward to its upcoming government-to-government consultation with DOH and DOS. Please contact Patty Perry, Director Kootenai Tribal Department of Administration, to schedule an appropriate time for such consultation.

Sincerely yours,

Jennifer Porter, Chairperson
Kootenai Tribe of Idaho

cc: The Hon. Mike Crapo, Senator
The Hon. Larry Craig, Senator
The Hon. Bill Sali, Congressman
The Hon. C.L. "Butch" Otter, Governor
Ktunaxa/Kinbasket Tribal Council
Confederated Salish and Kootenai Tribes of the Flathead Reservation
Kootenai Tribal Attorney