

Applying for Presidential Permits for Border Crossing Facilities (Mexico)

Fact Sheet

BUREAU OF WESTERN HEMISPHERE AFFAIRS

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Bureau of Western Hemisphere Affairs Presidential Permits for Border Crossings [Web Page](#)

This document describes in general terms the application process for Presidential permits for the construction, connection, operation, and maintenance of facilities on the U.S.-Mexico border. It is intended to help permit applicants understand the permit process, and does not constitute an exhaustive review of all steps that must be taken from concept development through construction of a cross-border facility. Permitting, construction, and completion of any project on the U.S.-Mexico border requires close coordination and planning with the Government of Mexico as well as with sponsors and federal, state, and local authorities in both countries.

What is a Presidential Permit?

[Executive Order 11423](#), August 16, 1968 (33 Fed. Reg. 11741) states that "...the proper conduct of the foreign relations of the United States requires that executive permission be obtained for the construction and maintenance at the borders of the United States of facilities connecting the United States with a foreign country." Such permission is conveyed via a Presidential permit issued by the Department of State. Permits are required for the full range of facilities at the border, including land border crossings, bridges, pipelines, tunnels, conveyor belts and tramways. The Department of State reviews permit applications for most facilities at the border, although other agencies permit certain cross-border facilities under separate legal authority, as detailed below. To issue a permit, the Department must find that the border crossing facility would serve the national interest. The Department consults extensively with relevant

federal, state, and local agencies, and invites public comment in arriving at its determination.

Legal Authorities

The Department's legal authority to issue Presidential permits for land border crossings, international bridges, pipelines and certain other transboundary facilities is found in [Executive Order 11423](#) of August 16, 1968, as amended by [Executive Order 12847](#) of May 17, 1993 (58 Fed. Reg. 29511), [Executive Order 13284](#) of January 23, 2003 (68 Fed. Reg. 4075), and [Executive Order 13337](#) of April 30, 2004 (69 Fed. Reg. 25299) and, to the extent applicable, the International Bridge Act of 1972 (33 U.S.C. Section 535 et seq.). In considering whether to issue a permit, the Department complies with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. Section 4321 et seq.) and its implementing regulations, the National Historic Preservation Act (NHPA) of 1966 (16 U.S.C. Section 470f), and Executive Order 12898 of February 11, 1994 (59 Fed. Reg. 7629), concerning environmental justice.

Early Consultations Are Desirable

Applicants should consult as early as possible with relevant federal and state agencies. Such consultations help the applicant understand the application process and address possible concerns at an early date. At the federal level, applicants should consult with the General Services Administration, the Department of Transportation's Federal Highway Administration, the Department of Homeland Security's Bureau of Customs and Border Protection, the Environmental Protection Agency, the Department of the Interior's Fish and Wildlife Service, the Coast Guard (if the project is an international bridge), and the U.S. Section of the International Boundary and Water Commission, as well as the Department of State. At the state and local level, the applicant should consult with appropriate agencies, including those responsible for highways, the environment, parks, wildlife, and historic and cultural preservation.

Project Categories and Notification

A Presidential permit is required for all new border crossings as well as for all substantial modifications of existing border crossings. As described in **Interpretative Guidance** that it published in the Federal Register on February 23, 2007, the Department has identified three categories of non-pipeline projects for purposes of notification of the Department of State. These three categories set out below, which are based on the magnitude and complexity of the proposed change(s) at the border, are intended to provide guidance on the exercise of the Department's permitting responsibilities.

- **Red** (both notification of the Department and new or amended Presidential permit are required): (1) all new border crossings and (2) proposed changes that would substantially modify an existing border crossing.
- **Yellow** (notification of the Department required and a Presidential permit may be required): modification of an existing border crossing that may have a material effect on Canadian or Mexican government operations in their respective country. The sponsor must notify the Department of its plans. The Department will decide if a Presidential permit is required within a specified period.
- **Green** (neither Department notification nor Presidential permit required): changes in the proximity of the border that are not expected to have a material effect on Canadian or Mexican government operations in their respective country and are neither new border crossings nor substantial modifications to existing border crossings.

How to Apply and What to Include in the Application

Applications for Presidential permits for land border crossings, international bridges, and certain other transboundary facilities at the U.S.-Mexico border are made to:

Secretary of State

Attention: Coordinator for U.S.-Mexico Border Affairs

WHA/MEX Room 3909

Department of State

2201 C Street NW
Washington, DC 20520

Applicants should deliver five printed copies of the completed application to the Department and also send the application (divided into PDF files of no more than 5 Mb each) by e-mail to WHA-BorderAffairs@state.gov, so that it can be efficiently distributed to other agencies for their review.

See below for information about submitting applications for facilities at the U.S.-Canada border or for oil or liquids pipelines.

Presidential permit applications should include the following:

- **Identifying Information.** Information precisely identifying the person, entity, or entities applying for the permit. If the applicant is a county, municipality, or other public body, the applicant should state its legal authority to make the application. If the applicant is an entity (partnership, corporation, etc.), the application should identify the individual, entity, or entities that holds a controlling interest in the applicant and that will be making final decisions on behalf of the applicant concerning the construction, connection, operation, and maintenance of the proposed border facility. The application should specify any intention on the part of the applicant to transfer, sell, or assign to any other entity the facility for which approval is sought.
- **Description of Facility.** A detailed description of the proposed facility, including its location, design, the safety standards to be applied, access routes, and details of the proposed construction methods. The application should also include photographs of the construction site; maps that identify the parcel of land that the sponsor intends to provide as a site for the border crossing, if applicable; engineering drawings including the anticipated cross-section, technical specifications, and such other explanatory materials as are available.
- **National Interest.** An explanation of how the proposed facility would serve the national interest. This explanation may be supported by any reports, correspondence, and other material indicating the desirability and feasibility of the proposed facility.

- **Similar Facilities.** A map that identifies similar facilities in the area, and a list of the names and addresses of their owners.
- **Traffic Information.** Information about current and projected levels of international road traffic and a description of the road system that would serve the facility on each side of the border. The application should discuss the project's consistency with state and regional plans as well as commitments to ensure an adequate support infrastructure, including access roads. The application should project the type and volume of traffic that the proposed border crossing will accommodate, as well as the effect that traffic would have on, and its compatibility with, the existing road system and nearby bridges and border crossings. Maps showing U.S. and Mexican roads with traffic counts, weight or other use restricted routes, and any roads that would be built along with the facility would be helpful. These maps and other application materials should show from where the projected traffic is expected to come and the likely impact of any traffic diversion caused by the facility on other border crossings. This information will help establish requirements for any inspection facility at the proposed border facility.
- **Construction Plan.** A plan for construction of the facility, including an expected schedule for securing other necessary permits and approvals, financing, and construction. The applicant should identify any specific problems anticipated in the development and construction of the facility along with an indication of how they might be resolved.
- **Financing.** The estimated cost of the project, including inspection facilities and inspection agency staffing, and an explanation of how the applicant will finance that cost, including, if applicable, the proposed toll structure. If the facility, including any access roads, will involve approval or funding from state or federal sources, the application should so specify and should indicate the steps that have been or will be taken to secure such approval and/or funding.
- **Mexican Approvals.** Information showing how the project fits with Mexican development plans and priorities and a description of all steps that the applicant has taken or will take to secure the approval of local, state, and federal officials in Mexico. The Government of Mexico has asked that applications be made at the same time in the two countries. The applicant should indicate any known views of Mexican officials regarding the facility and describe general arrangements for financing, construction, and

ownership of the Mexican portion of the facility. The applicant should attach copies of any agreements or understandings about these matters. Under the 1972 International Bridge Act, the applicant must obtain all required authorizations from Mexican officials before the Department of State may approve an international bridge. It is not necessary to satisfy all Mexican requirements before applying for a Presidential permit. However, to avoid the unnecessary expenditure of resources by both the U.S. Government and the applicant, the applicant should present evidence that Mexican authorities do not object to the construction of the proposed facility.

- **Other U.S. Approvals.** A list of all permits or approvals from U.S. federal, state, and local agencies that the applicant believes are required in connection with the proposed facility, and a description of what steps have been or will be taken to secure them.
- **Historic Preservation.** A list of all properties in the project area which are included in or potentially eligible for inclusion in the National Register of Historic Properties. Pursuant to the National Historic Preservation Act (section 106), the Department must consider the effects of the proposed facility on such properties and seek concurrence from the appropriate State Historic Preservation Office. The Department may also seek comment from the Advisory Council on Historic Preservation, an independent federal agency established under the NHPA.
- **Environmental Justice.** Information on minority and low-income populations likely to be affected by construction of the proposed facility. This information assists the Department in fulfilling its obligations pursuant to Executive Order 12898 on environmental justice.

Environmental Review

In addition to the above, the applicant should include information about foreseeable environmental impacts of the proposed facility. Pursuant to NEPA, in considering an application for a Presidential permit, the Department must take into account environmental impacts of the proposed facility and directly related construction. Environmental impacts may be direct, indirect, or cumulative. Prior to deciding whether to issue the Presidential permit, the Department may be required to prepare, circulate for comment, and file environmental documentation. Applications should include any environmental documentation applicants believe is required under NEPA and the

regulations found in 40 CFR Parts 1500-1508, whether that is an environmental assessment (EA) or an environmental impact statement (EIS). If an EA is produced and there is a finding of potential significant impacts, under NEPA an EIS must be conducted.

For additional information about NEPA, please see the federal government's NEPA web site at <http://www.nepa.gov>. The Department's NEPA implementing regulations are located at <http://www.state.gov/documents/organization/22979.doc>. To further understand the issues that will need to be addressed in your environmental assessment, you may want to consult the following guidance documents from other federal agencies:

- <http://www.eh.doe.gov/nepa/tools/guidance/volume2/2-3-eachecklist.pdf>
- <http://www.ferc.gov/industries/gas/enviro/applcgrf.pdf>
- <http://www.fws.gov/r9esnepa/checklists/EAEISOutline.PDF>

Agency Review and Public Comment

Once the application is complete, the Department will instruct the applicant to provide copies -- including all environmental and other documentation -- to relevant federal and state agencies for their comment. The Department will also publish a notice in the Federal Register inviting public comment on the application. If the proposed facility is located within or near an area declared to be a Clean Air Act non-attainment area under the, the Department must engage in additional consultation with the Environmental Protection Agency and appropriate state agencies concerning the level of environmental documentation required. Should questions from the agencies arise during the review, they will be referred to the applicant. The Department, participating agencies, and the applicant will work together to resolve such questions.

The applicant may be required to prepare additional documents reflecting any agreements made in the course of mitigation and/or addressing agency concerns. The Department would then circulate the supplemental information for final agency review. If the Department determines that the project would have no significant environmental

impact, the Department will issue a Finding of No Significant Impact (FONSI) and publish it in the Federal Register. If it finds a significant impact, or in other appropriate circumstances, the applicant must arrange for the hiring of a third party environmental contractor to prepare a full environmental impact statement (EIS) before the permit application may be considered further.

National Interest Determination and Permit Issuance

Executive Order 11423 specifies certain federal officials with whom the Department must consult when reviewing a permit application. The Department may also consult with other federal, state, and local government officials, and it will consider all views expressed, including public comment, before making a decision on a permit. When these consultations are complete, the Secretary of State or the Secretary's designee will decide whether issuance of a permit to the applicant would be in the national interest. If a positive determination is made, the Department informs federal agencies of its intention to issue a Presidential permit. Barring objection(s) from any of the officials specified in the Executive Orders, the Department will issue the Presidential permit 15 days thereafter. In the case of an objection, the Secretary of State will refer the matter directly to the President for a final decision.

Other Necessary Approvals Prior to Authorizing Construction

1. Under the provisions of the International Bridge Act of 1972 (22 U.S.C. 535, 535c-535h), the Coast Guard has jurisdiction over the construction, modification, operation, and maintenance of any bridge connecting the United States with a foreign country. Applicants should consult with the **Coast Guard** directly regarding its permitting process.

2. Plans for construction of the proposed facility must be submitted to the **International Boundary and Water Commission (IBWC)**, the U.S. section of which is located in El Paso, Texas, and the Mexican section in Ciudad Juarez, Mexico, for its approval. The IBWC will assess whether the effects of the facility will be consistent with existing bilateral arrangements between the United States and Mexico; will obscure or otherwise

affect the boundary between the United States and Mexico; and, if applicable, will change the course of the Rio Grande or increase the risk of flooding.

Bilateral Coordination with the Government of Mexico

The Department coordinates closely with the Government of Mexico through the Secretariat of Foreign Relations (SRE) and the Embassy of Mexico on issues affecting the U.S.-Mexico border. The Department communicates with the Government of Mexico via diplomatic notes at various stages in the permit process. For example, the Department informs the Government of Mexico via diplomatic note when it receives permit applications and when it issues permits. Construction generally cannot begin until the U.S. and Mexican Governments exchange diplomatic notes specifically authorizing construction. The Department must approve any contractual arrangement between state or local authorities and Mexican federal, state, or municipal authorities concerning construction of the facility prior to the exchange of notes authorizing construction. Permittees must keep the Department informed of all significant developments related to construction so that the Department may conduct the necessary bilateral coordination with the Government of Mexico concerning the border crossing facility.

Natural Gas Pipelines and Electrical Connections

Although the Department of State processes permits for most cross-border facilities, there are some exceptions. Presidential permits for electrical lines are processed by the Department of Energy, while Presidential permits for natural gas pipelines are processed by the Federal Energy Regulatory Commission. Both permits are issued under Executive Order 10485 of 1953, as amended by Executive Order 12038. Questions about Presidential permits for electrical lines should be directed to the Department of Energy at (202) 586-9624; for natural gas pipelines, to the Federal Energy Regulatory Commission at (202) 208-2245.

More Information

For more information about Presidential permits for facilities at the U.S.-Mexico border, please contact the Department's Office of Mexican Affairs at the address below, by phone at (202) 647-9894, or by e-mail at WHA-BorderAffairs@state.gov.

Coordinator for U.S.-Mexico Border Affairs
WHA/MEX, Room 3909
Department of State
2201 C Street NW
Washington, DC 20520

For more information about Presidential permits for oil and liquids pipelines, please contact the Department's Office of International Energy and Commodities Policy at the address below or at (202) 647-1291.

Office of International Energy and Commodities Policy
Mail Stop EEB/ESC/IEC
Department of State
2201 C Street NW
Washington, DC 20520

For more information about Presidential permits for facilities at the U.S.-Canada border, please contact the Department's Office of Canadian Affairs at the address below or at (202) 647-2170.

Economic Officer
WHA/CAN, Room 3917
Department of State
2201 C Street NW
Washington, DC 20520