

Applying for a Presidential Permit from the Department of State

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Bureau of Western Hemisphere Affairs
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Introduction

This pamphlet describes the application process for Presidential Permits for the construction, operation, and maintenance of facilities on the U.S.-Mexico border. It is intended only to help Permit applicants better understand the Permit process, and does not constitute an exhaustive review of all steps that must be taken from concept development through construction. 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, local and state 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. Permits are required for "the full range of facilities" on the border, including, *inter alia*, bridges, pipelines, tunnels, conveyor belts and tramways. Permit applications for most facilities at the border are processed by the Department of State, although other agencies do permit certain cross-border facilities under separate legal authority, as detailed on page 6. In processing permit applications, the Department of State is responsible for coordinating compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. Section 4321 et seq.), 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. To issue a Permit, the Department must find that issuance would serve the national interest. The Department consults extensively with concerned federal and state agencies, and invites public comment in arriving at this determination.

Legal Authorities

The State Department's legal authority to issue Presidential Permits for international bridges, oil 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) and, to the extent applicable, the International Bridge Act of 1972 (33 U.S.C. Section 535 et seq.).

Early Consultations Are Desirable

Generally, applicants should consult as early as possible with all federal and state agencies likely to be affected by the proposed facility. Such consultations will allow the applicant to learn of possible questions or concerns at an early date. At the federal level, applicants will probably need to consult with the General Services Administration, the Federal Inspection Services (the Immigration and Naturalization Service, the Customs Service, and the Animal and Plant Health Inspection Service of the Department of Agriculture), the Environmental Protection Agency, the Fish and Wildlife Service of the Department of the Interior, 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 level, the applicant should consult with appropriate agencies, including those responsible for the environment, parks, wildlife, highways, and historic and cultural preservation.

How to Apply and What to Include in the Application

Applications for Presidential Permits for international bridges and certain other transboundary facilities at the U.S.-Mexico border should be made to the Secretary of State, Attention: Coordinator for U.S.-Mexico Border Affairs, WHA/MEX, Room 4258 M.S., Department of State, 2201 C Street NW, Washington, D.C. 20520. Applicants should provide the Department five copies of the application and should be prepared to provide approximately 25 more copies directly to the Department or other federal and state agencies at the Department's request. Applications for oil or liquids pipelines should be made to the Office of International Energy and Commodities Policy, Mail stop EB/ESC/IEC, Department of State, 2201 C Street NW, Washington, D.C. 20520. Applications should generally include the following:

- **Identifying Information.** Information precisely identifying the person or entity 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. The application should specify any intention on the part of the applicant at any time 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, inter alia, the parcel of land intended to be provided by the sponsor 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, in the view of the applicant, 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 list of similar facilities in the area including the names and addresses of their owners. Such facilities should be identified on a map.
- **Traffic Information.** If applicable, information about existing 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. In the case of bridges, the application should project the volume of traffic to be carried by the proposed bridge, 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 bridge on other border crossings. This information will help establish the required size of any inspection facility at the proposed bridge site.

- **Construction Plan.** An action 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.** An explanation of how the applicant will finance the facility, including estimated costs, and, if applicable, the proposed toll structure. If the facilities, 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.** A description of all steps that have been or will be taken to secure the approval of local, state and federal officials in Mexico. The Government of Mexico has expressed its desire that applications for permits to construct cross-border facilities be made at more or less the same time in the two countries. The Permit 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. According to the 1972 International Bridge Act, all required authorizations of the Government of Mexico must be obtained before an international facility may be constructed. 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 that are included in or potentially eligible for inclusion in the National Register of Historic Properties. Pursuant to the National Historic Preservation Act, the Department must consider the effects of the proposed facility on such properties and seek comment from the Advisory Council on Historic Preservation, an independent federal agency established under the NHPA. The Department also seeks comment from the appropriate State Historic Preservation Office.
- **Environmental Justice.** Information on minority and low-income populations likely to be affected by construction of the proposed facility. This information will assist the Department in fulfilling its obligations pursuant to Executive Order 12898 on environmental justice.

- **Compatibility with NEC Recommendations.** If applicable, information that shows that, consistent with the recommendations contained in the August 8, 1994 National Economic Council White Paper, "Staff Recommendations of the Task Force on Border Infrastructure and Facilitation for Improved U.S. Border Operations," (A) there are the commitments necessary to ensure an adequate support infrastructure, including access roads, consistent with state and regional plans; (B) Mexican development plans and priorities have been taken into account; and (C) a viable financing plan for inspection facilities and inspection agency staffing, as well as for the crossing itself, is in place.

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 of State 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 of State 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, it may be necessary, depending upon the finding of the Department of State, to produce an EIS.

Agency Review And Public Comment

Once the application is completed, the Department of State will instruct the applicant to provide copies -- including all environmental and other documentation -- to other federal and state agencies, as appropriate, for their comment. The Department will also publish a notice in the Federal Register inviting public comment. If the proposed facility is located within or near an area declared to be a non-attainment area under the Clean Air Act, 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 of State, participating agencies and the applicant will work together to resolve such questions, as appropriate. The applicant may be required to prepare an amended application reflecting any agreements made in the course of mitigation and/or addressing agency concerns. The Department of State would then circulate the amended application for final agency review. If the Department of State determines that the project would have no significant environmental impact, the Department will issue a Finding of No Significant Impact (FONSI). The Department will publish the FONSI in the Federal Register. If a significant impact is found, a full environmental impact statement must be prepared before the Permit application may be considered further.

National Interest Criteria

The Department is required to request the views of the federal officials specified in the Executive Orders, and may also seek to consult with such other federal, state, and local government officials as is appropriate. The Department takes all views expressed, including public comment, into account before making a decision on a permit. Once the consultations and findings referred to above have been made, the Secretary of State or the Secretary's designee will make a determination whether or not issuance of a permit to applicant would be in the national interest. If a positive determination is made, federal agencies are informed of the Department's intention to issue a Presidential Permit and, barring objection(s) from any of the officials specified in the Executive Orders, the Presidential Permit is issued 15 days thereafter. If such an objection is expressed, and cannot be resolved, the matter is referred back to the Secretary for referral of the

application directly to the President for the President's consideration and 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 that agency's permit 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.
3. Receipt of a Presidential Permit does not guarantee the availability of sufficient U.S. personnel to provide essential inspection services. If applicable, applicants should periodically consult with the Federal Inspection Services to keep abreast of staffing decisions that could affect the opening of the proposed facility.

Bilateral Coordination with the Government of Mexico

The Department of State 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 generally informs the Government of Mexico via diplomatic note when Permit applications are received and when Permits are issued. 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. After notes are exchanged, 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.

Land Crossings

Presidential Permits are generally not required for land crossings. However, proposals for new land crossings are evaluated through the same interagency process described above. Requirements for new land crossings are similar to those for projects requiring Presidential Permits, particularly with regard to environmental documentation.

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 Department of Energy's Federal Energy Regulation Commission. Both Permits are issued under E.O. 10485 of 1953, as amended by E.O. 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 Regulation Commission at (202) 208-2245.

Presidential Permits for International Bridges Issued: 1976-present

Presidio/Ojinaga Bridge, 1976

Roma/Miguel Aleman Bridge, 1977

Pharr/Reynosa III Bridge, 1978

Mission/Reynosa Bridge, 1978 *

Donna/Rio Bravo Bridge, 1979 *

Ysleta/Zaragoza Bridge, 1987

Colombia/Colombia Bridge, 1990

Los Indios/Lucio Blanco Bridge, 1990

Los Tomates/Matamoros III Bridge, 1993

Laredo IV/Nuevo Laredo III Bridge, 1994 (amended 1999)

Laredo/Nuevo Laredo Railroad Bridge, 1995 *

Eagle Pass II/Piedras Negras II Bridge, 1996

Port of Brownsville/Matamoros Bridge, 1997 *

Anzalduas/Reynosa Bridge, 1999 *

* Pending Construction

More Information

Questions about Presidential Permits for facilities at the U.S.-Mexico border should be directed to the Department of State's Office of Mexican Affairs in the Bureau of Western Hemisphere Affairs at the address below or at (202) 647-8529.

Coordinator for U.S.-Mexico Border Affairs

WHA/MEX, Room 4258 MS

Department of State

2201 C Street NW

Washington, DC 20520

Questions regarding Presidential Permits for oil and liquids pipelines should be directed to the Department of State's Office of International

Energy and Commodities Policy in the Bureau of Economic and Business Affairs at the address below or at (202) 647-3423.

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

Questions about Presidential Permits for facilities at the U.S.-Canada border should be directed to the Department of State's Office of Canadian Affairs in the Bureau of Western Hemisphere Affairs at the address below or at (202) 647-2170.

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

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