



#### Fact Sheet

Office of Canadian Affairs, Bureau of Western Hemisphere Affairs  
Washington, DC  
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## Applying for Presidential Permits for Border Crossing Facilities (Canada)

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

This document describes the application process for Presidential permits for the construction, operation, and maintenance of facilities on the U.S.-Canada 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. Permitting, construction, and completion of any project on the U.S.-Canada border requires close coordination and planning with the Government of Canada 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 through a Presidential permit. Permits are required for the full range of facilities on the border, including land border crossings, bridges, pipelines, tunnels, conveyor belts and tramways. The Department of State processes 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 facility would serve the national interest. The Department consults extensively with relevant federal, state, and local agencies, and invites public comment in arriving at this determination.

#### Legal Authorities

The Department's legal authority to issue Presidential permits for land border crossings, international bridges, oil pipelines and certain other trans-boundary 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 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 processing permit applications, the Department reviews 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, as amended (16 U.S.C. Section 470f), the Endangered Species Act of 1973, as amended (16 USC 1531 et seq.), 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 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), 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.

#### Project Categories and Notification

As described in [Interpretative Guidance that it published in the Federal Register on February 23, 2007](#) (72 Fed. Reg. 8245), the Department has identified three categories of non-pipeline projects for purpose of determining whether a new or amended Presidential permit is required. These categories are based on the magnitude and complexity of the proposed changes at the border.

- Red (both notification to the Department of the change 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 to the Department of the change is required and a Presidential permit may be required): modification of a 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 promptly decide if a Presidential permit is required.
- Green (neither Department notification nor Presidential permit is required): changes that are not expected to have a material effect on Canadian or Mexican government operations in their respective country and are not substantial modifications to the border crossing.

For a more detailed explanation of the categories identified above, the Department would refer to the detailed Interpretative Guidance published in the Federal Register (72 Fed. Reg. 8245).

#### How to Apply and What to Include in the Application

Applications for Presidential permits for land border crossings, international bridges, and certain other trans-boundary facilities at the U.S.- Canada border are made to the Secretary of State, Attention: Border Affairs Officer, WHA/CAN, Room 3917, Department of State, 2201 C Street NW, Washington, D.C. 20520 or to [WHACANmail@state.gov](mailto:WHACANmail@state.gov). Applicants should provide the Department five copies of the application and should be prepared to provide approximately 50 more copies in cd-rom or equivalent electronic format directly to the Department or to other federal and state agencies at the Department's request. See below for information about submitting applications for facilities at the U.S.-Mexico border or for oil or liquids pipelines.

Applications should include the following:

- Identifying Information. Information precisely identifying the person or entity applying for the permit that will ultimately be responsible for the crossing. If a corporate entity, please identify the ultimate parent corporation and its individual owners. If the applicant is a county, municipality, or other public body, the applicant should state its legal authority to make the application and to own and/or occupy the crossing. 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. For land border crossings, the General Services Administration will generally be the permittee.
- 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, including, if applicable, whether and how the facility may affect the level, flow, or content of any nearby waters.
- 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 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 Canadian 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 the source or sources of the projected traffic and the likely impact of any traffic diversion caused by the facility on other border crossings. This information will help establish the required size of 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, as well as whether construction may affect the level, flow, or content of any nearby waters.
- **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 timely secure such approval and/or funding.

**Canadian Approvals.** A description of all steps that have been or will be taken to secure the approval of local, provincial, and federal officials in Canada. The Government of Canada has expressed its desire that applications for permits to construct cross-border facilities be made at the same time in the two countries. The permit applicant should indicate any known views of Canadian officials regarding the facility and describe general arrangements for financing, construction, and ownership of the Canadian portion of the facility. The applicant should attach copies of any agreements or understandings about these matters. Under the terms of the 1972 International Bridge Act, all required authorizations of the proper authorities in Canada must be obtained before an international facility may be constructed. It is not necessary to satisfy all Canadian 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 Canadian authorities do not object to the construction of the proposed facility. Information concerning Canadian procedures may be found at the following links:

#### **Guidelines for the construction of an international bridge or tunnel**

<http://www.tc.gc.ca/programs/surface/bridges/IBTAguidelines1.htm>

#### **Guidelines for the alteration of an international bridge or tunnel**

<http://www.tc.gc.ca/programs/surface/bridges/IBTAguidelines2.htm>

#### **Guidelines for the change in ownership, operator or control of an international bridge or tunnel**

<http://www.tc.gc.ca/programs/surface/bridges/IBTAguidelines3.htm>

#### **Canadian Environmental Assessment Act Requirements and the International Bridges and Tunnels Act**

[http://www.ceaa-acee.gc.ca/013/ibta\\_e.htm](http://www.ceaa-acee.gc.ca/013/ibta_e.htm)

- **Other U.S. Approvals.** A list of all permits or approvals from all applicable agencies, including 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.

#### **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. If an Environmental Assessment (EA) is produced by the applicant, it may be necessary, depending upon the Department's analysis, for the Department to prepare an EIS. For additional guidance on NEPA requirements, you may wish to consult the following web sites:

<http://www.ferc.gov/industries/gas/enviro/applcgrf.pdf>

<http://www.eh.doe.gov/nepa/tools/guidance/volume2/2-3-eacheklist.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. 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, participating agencies, and the applicant will work together to resolve such questions.

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 would then circulate the amended application 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). The Department will publish the FONSI in the Federal Register. If a significant impact is found, the Department must 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 appropriate federal, state, and local government officials, and it considers 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 or not 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 (33 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 permit process.
2. Receipt of a Presidential permit does not guarantee the availability of sufficient U.S. personnel to provide essential inspection services at the border crossing. Applicants should consult with Bureau of Customs and Border Protection of the Department of Homeland Security regarding staffing decisions that could affect the opening and operation of the proposed facility.

#### **Bilateral Coordination with the Government of Canada**

The Department coordinates closely with the Government of Canada through a wide variety of channels. Issues involving bridges are generally coordinated through Transport Canada, which is responsible under Canada's International Bridges and Tunnels Act for permitting international bridges at the federal level. Construction generally cannot begin until the U.S. and Canadian Governments exchange diplomatic notes specifically authorizing construction. The Department must approve any contractual arrangement between state or local authorities and Canadian federal, provincial, 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 Canada and, if needed, with other entities.

#### **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 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 Regulatory Commission at (202) 208-2245.

#### **More Information**

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, by phone at (202) 647-2170, or by e-mail at [WHACANmail@state.gov](mailto:WHACANmail@state.gov).

Officer for U.S.-Canadian Border Affairs  
WHA/CAN, Room 3917  
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) 647-3423.

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

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) 647-8529, or by e-mail at [WHA-BorderAffairs@state.gov](mailto:WHA-BorderAffairs@state.gov).

Coordinator for U.S.-Mexico Border Affairs  
WHA/MEX, Room 4258  
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2201 C Street NW  
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