

**Executive Order 11423--Providing for the performance of certain functions heretofore performed by the President with respect to certain facilities constructed and maintained on the borders of the United States**

**Source:** The provisions of Executive Order 11423 of Aug. 16, 1968, appear at 33 FR 11741, 3 CFR, 1966-1970 Comp., p. 742, unless otherwise noted.

WHEREAS 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; and

WHEREAS such executive permission has from time to time been sought and granted in the form of Presidential permits for the construction, connection, operation, and maintenance at the borders of the United States of such border crossing facilities as water supply and oil pipelines, aerial tramways and cable cars, submarine cables, and lines for the transmission of electric energy; and

WHEREAS Executive Order No. 10485 of September 3, 1953, empowers the Federal Power Commission<sup>1</sup> to issue permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the transmission of electric energy between the United States and a foreign country and for the importation or exportation of natural gas to or from a foreign country; and

WHEREAS Executive Order No. 10530 of May 10, 1954, empowers the Federal Communications Commission to issue and revoke licenses to land submarine cables in the United States; and

WHEREAS it is desirable to provide a systematic method in connection with the issuance of permits for the construction and maintenance of other such facilities connecting the United States with a foreign country:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States and Commander in Chief of the Armed Forces of the United States and in conformity with the provisions of Section 301 of Title 3, United States Code, it is ordered as follows:

**Section 1.** (a) Except with respect to facilities covered by Executive Orders No. 10485 and No. 10530, the Secretary of State is hereby designated and empowered to receive all applications for permits for the construction, connection, operation, or maintenance, at the borders of the United States, of: (i) pipelines, conveyor belts, and similar facilities for the exportation or importation of petroleum, petroleum products, coal, minerals, or other products to or from a foreign country; (ii) facilities for the exportation or importation of water or sewage to or from a foreign country; (iii) monorails, aerial cable cars, aerial tramways and similar facilities for the transportation of persons or things, or both, to or from a foreign country; and (iv) bridges, to the extent that congressional authorization is not required.

(b) With respect to applications received pursuant to subsection (a)(i) above, the Secretary of State shall request the views of the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of the Interior, the Secretary of Commerce, the Secretary of

Transportation, the Interstate Commerce Commission, and the Director of the Office of Emergency Planning.<sup>2</sup> With respect to applications received pursuant to subsection (a)(ii) above, the Secretary of State shall request the views of the Secretary of Defense and the Secretary of the Interior. With respect to applications received pursuant to subsection (a)(iii) or (iv) above, the Secretary of State shall request the views of the Secretary of the Treasury, the Secretary of Defense, the Attorney General, and the Secretary of Transportation.

(c) The Secretary of State may also consult with such other department and agency heads and with such state and local government officials as he deems appropriate with respect to each application. All federal government officials consulted by the Secretary of State pursuant to this section shall provide such information and render such assistance as he may request, consistent with their competence and authority.

(d) If the Secretary of State finds, after consideration of the views obtained pursuant to subsections (b) and (c), that issuance of a permit to the applicant would serve the national interest, he shall prepare a permit, in such form and with such terms and conditions as the national interest may in his judgment require, and shall notify the officials required to be consulted under subsection (b) above of his proposed determination that the permit be issued.

(e) If the Secretary of State finds, after considerations of the views obtained pursuant to subsections (b) and (c), that issuance of a permit to the applicant would not serve the national interest, he shall notify the officials required to be consulted under subsection (b) above of his proposed determination that the application be denied.

(f) The Secretary of State shall issue or deny the permit in accordance with his proposed determination unless, within fifteen days after notification pursuant to subsection (d) or (e) above, an official required to be consulted under subsection (b) above shall notify the Secretary of State that he disagrees with the Secretary's proposed determination and requests the Secretary to refer the application to the President. In the event of such a request, the Secretary of State shall refer the application, together with statements of the views of the several officials involved, to the President for his consideration and final decision.

**Sec. 2.** (a) The Secretary of State may provide for the publication in the **Federal Register** of notice of receipt of applications, for the receipt of public comments on applications, and for publication in the **Federal Register** of notice of issuance or denial of applications.

(b) The Secretary of State is authorized to issue such further rules and regulations, and to prescribe such further procedures, as he may from time to time deem necessary or desirable for the exercise of the authority conferred upon him by this order.

**Sec. 3.** The authority of the Secretary of State hereunder is supplemental to, and does not supersede, existing authorities or delegations relating to importation, exportation, transmission, or transportation to or from a foreign country. All permits heretofore issued with respect to matters described in Section 1 of this order, and in force at the time of issuance of this order, and all permits issued hereunder, shall remain in effect in accordance with their terms unless and until modified, amended, suspended, or revoked by the President or, upon compliance with the procedures provided for in this order, by the Secretary of State.

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<sup>1</sup>**Editorial note:** The Federal Power Commission was terminated and its functions transferred to the Department of Energy by Pub. L. 95-91 (91 Stat. 565, 42 U.S.C. 7101 nt.), effective Oct. 1, 1977.

<sup>2</sup>**Editorial note:** The name of the Office of Emergency Planning was changed to the Office of Emergency Preparedness by Pub. L. 90-608 (82 Stat. 1194, 50 U.S.C. App. 2271 nt.). The Office of Emergency Preparedness was abolished by Reorganization Plan No. 1 of 1973, 38 FR 9579, 3 CFR, 1971-1975 Comp., p. 1157, effective July 1, 1973.