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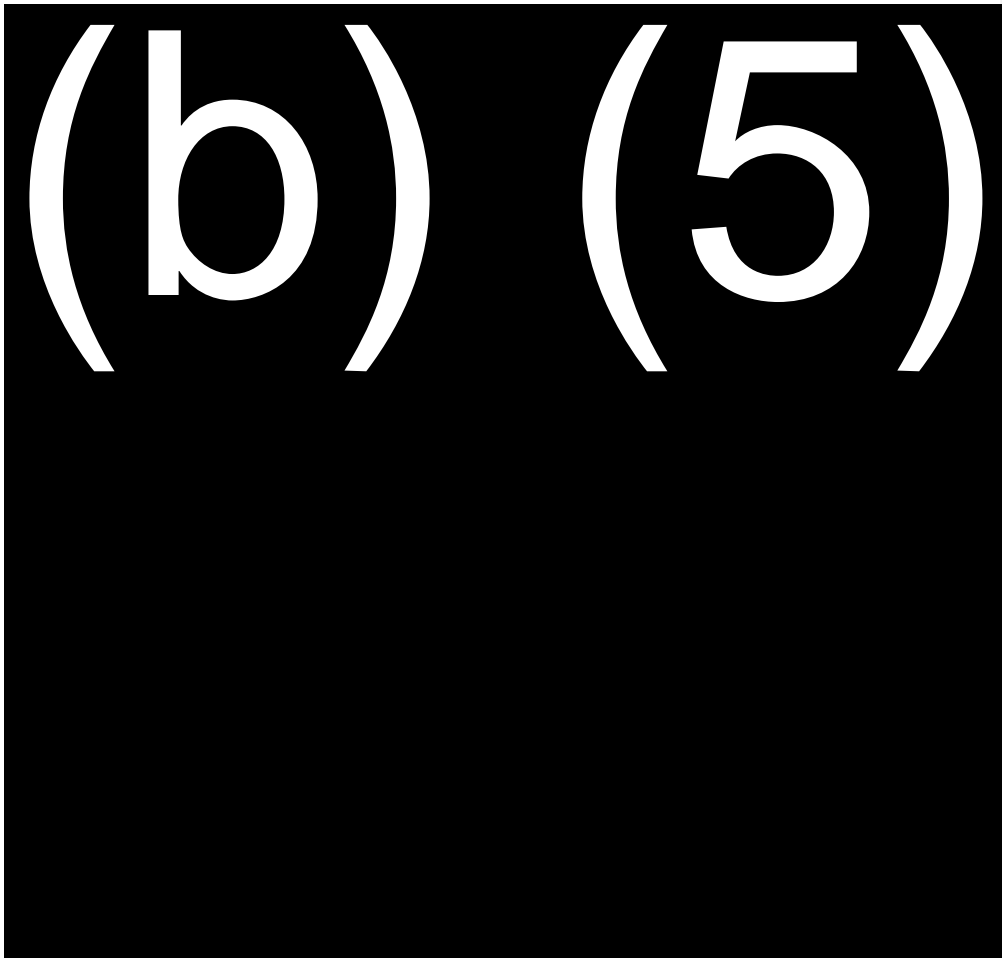


U.S. Customs and
Border Protection
Office of Public Affairs

Public Affairs Guidance

Border Wall – El Centro Waiver

Background



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Commented [AAN2]: The Hill has been told end of November

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Commented [AAN4]: Would we still say this about FY17-funded projects?

Commented [DCA5R4]: We still need this because our folks use it when they are asked about FY17 vs FY18. It helps educate reporters.

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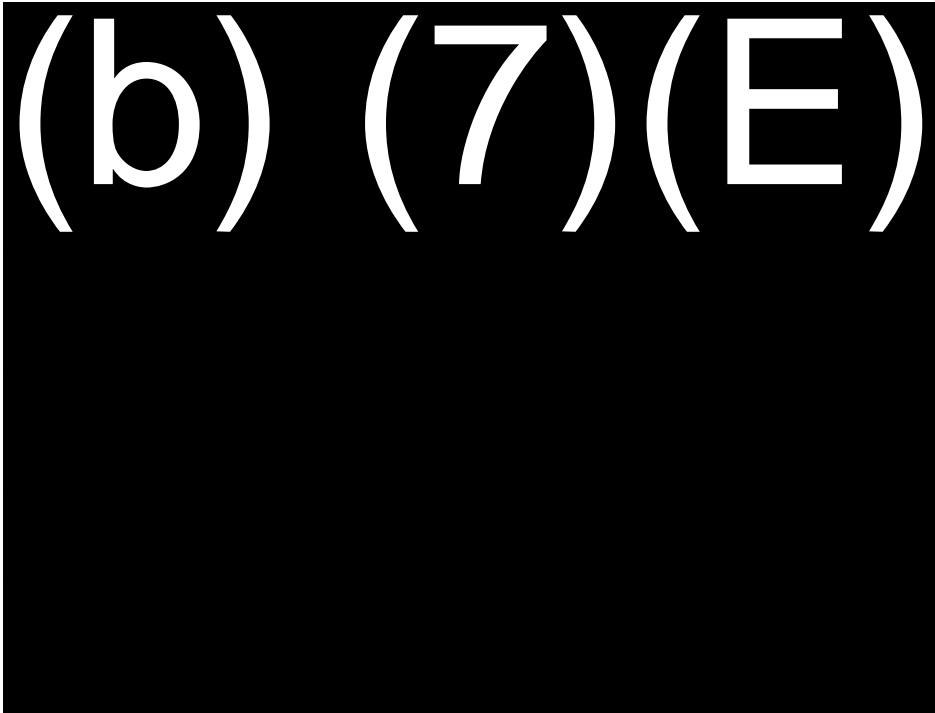
¹ Public Law 104-208, Div. C, 110 Stat. 3009-546, 3009-554 (Sept. 30, 1996) (8 U.S.C 1103 note), as amended by the REAL ID Act of 2005, Public Law 109-13, Div. B, 119 Stat. 231, 302, 306 (May 11, 2005) (8 U.S.C. 1103 note), as amended by the Secure Fence Act of 2006, Public Law 109-367, § 3, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. § 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110-161, Div. E, Title V, § 564, 121 Stat. 2090 (Dec. 26, 2007).

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Questions and Answers

Q1: Will CBP follow the National Environmental Protection Act (NEPA) process for the projects covered by this waiver?

A1: While the waiver eliminates CBP’s obligation to comply with NEPA for this project, CBP remains committed to environmental stewardship. CBP will continue to assess potential impacts, coordinate with relevant stakeholders and to the extent possible, offset or mitigate potential impacts.

Q2: Given the waiver of environmental laws, will DHS implement any environmental planning/evaluation of possible impacts and mitigation for those impacts?

A2: Yes. DHS is committed to responsible environmental stewardship. In the spirit of NEPA, and as was the case with past projects covered by a waiver, DHS will continue to evaluate the potential impacts of border infrastructure that is planned for the project area. Among other actions, DHS will conduct new environmental surveys of the project area where existing data does not exist, as well as utilize existing data, coordinate and consult with local, state and federal stakeholders, and analyze potential impacts.

Q3: What is the waiver?

A3: The Secretary of Homeland Security’s waiver authority is set out in Section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (“IIRIRA”). The

waiver authority allows the Secretary to waive all legal requirements the Secretary deems necessary to construct barriers and roads to deter illegal entry into the United States.

Q4: What gives the Secretary authority to issue a waiver?

A4: The Secretary's waiver authority derives from Section 102(c) of IIRIRA, an authority granted to the Secretary by Congress. The waiver authority allows the Secretary to waive all legal requirements the Secretary deems necessary to construct barriers and roads to deter illegal entry into the United States.

Q5: What does the waiver gain DHS?

A5: The Secretary's waiver authority allows DHS to expeditiously construct barriers and roads to deter illegal entry into the United States by minimizing the risk of administrative delays and delays or stoppages because of litigation. Prior waivers have in fact facilitated the expeditious construction of existing border barriers and roads.

Q6: What area does the waiver cover?

A6: The waiver signed by the acting Secretary on August __, 2017, covers a project area that spans approximately three miles of the border within the United States Border Patrol's El Centro Sector Area of Responsibility. Specifically, the geographic scope of the waiver is an approximately three-mile segment starting at the (b) (7)(E) Port of Entry and extending westward

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Within this three-mile segment of the border, CBP plans to replace the existing primary pedestrian fence with new bollard wall. The existing primary fencing was built in the 1990s and no longer meets Border Patrol's operational needs. The El Centro fence replacement is one of Border Patrol's highest priority projects.

Q7: What laws are being waived?

A7: In order to ensure the expeditious construction of the projects in the El Centro area, the acting Secretary determined it was necessary to waive 28 environmental, natural resource, and land management laws.

Q8: Does the waiver address the laws or processes concerning that acquisition of private property?

A8: No, the process required for the acquisition of private property is not affected by the waiver.

Q9: Does the waiver address procurement laws?

A9: No. The August __, 2017 waiver does not include any statutes, regulations, or other legal requirements that govern federal procurement.

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Q10: Why does DHS need to issue a waiver for this project in the El Centro Sector?

A10: The President's January 25, 2017, Executive Order entitled, "Border Security and Immigration Enforcement Improvements," makes clear that achieving operational control of the border is a priority for this Administration. To achieve operational control of the border DHS must, consistent with existing law, build the physical infrastructure necessary to secure the southern border of the United States. These projects are critical early steps in what will be a sustained effort to construct that physical infrastructure. Utilizing the authority provided by Congress in Section 102 of IIRIRA,

the Secretary's waiver minimizes the risk of delay and, in turn, puts DHS in a better position to continue to progress towards a secure southern border.

Q11: How many times has the Secretary issued a waiver of environmental laws?

A11:

Most recently former Secretary of Homeland Security John Kelly issues a single waiver in July 26, 2017. The location was the San Diego Sector. The geographic scope of the waiver is an approximately fifteen-mile segment starting at the Pacific Ocean and extending to the east to approximately (b) (7)(E) east of Border Monument (b) (7)(E)

Then Secretary of Homeland Security Michael Chertoff issued five previous waivers between 2005 and 2008. The locations were.

- San Diego, CA BIS (2005)
- Barry M Goldwater Range, AZ (2007)
- San Pedro Riparian National Conservation Area (SPRNCA) in southeastern Arizona (2007)
- CA, AZ, NM, and TX Waiver (2008) – This was the large waiver covering specific areas in each of the southern Border States for PF225 construction.
- Hidalgo County, TX (2008)

BIS = Border Infrastructure System located near the Pacific coast (the west end of the fence). The BIS is a system consisting of the primary fence, an enforcement zone, and a secondary fence.

PF225 = Pedestrian Fence, 225 miles (we were required to construct 225 miles of pedestrian fence by congress). The PF225 waiver did include fence construction in eastern San Diego County which is different from the BIS coverage in the 2005 waiver.

Q12: Does this waiver repeal all prior waivers?

A12: No. The Secretary's August 2017 does not repeal any of the six previous waivers.

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Q13: What environmental impacts does DHS anticipate as a result of these border barrier projects?

A13: The area of the El Centro project is devoid of vegetation and has been previously disturbed as a result of the original fence construction. Environmental impacts from the construction of this project are not expected to be significant. However, DHS is committed to responsible environmental stewardship with respect to these projects and will continue to assess potential impacts, coordinate with relevant stakeholders and to the extent possible, offset or mitigate potential impacts.

Q14: What projects does the waiver cover and when will construction begin?

A14: The waiver is intended to cover one project in an area that spans approximately three miles of the border within the United States Border Patrol's El Centro Sector Area of Responsibility. Specifically, the geographic scope of the waiver is an approximately three-mile segment starting at the (b) (7)(E) Port of Entry and extending westward. Within this three-mile segment of

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the border, CBP plans to replace the existing primary pedestrian fence with new bollard wall. The existing primary fencing was built in the 1990s and no longer meets Border Patrol's operational needs.

CBP has a target date of August 30th for publication of the El Centro waiver in the Federal Register. Contract award for the El Centro project is scheduled for November. Construction is scheduled to begin in February 2018. Having the waiver published and final prior to contract award will allow CBP to clearly instruct the vendor as to its environmental compliance responsibilities.

ADDITIONAL INFORMATION - ENVIRONMENTAL LAWS WAIVED

The August 1, 2017 waiver waived the following laws:

- The National Environmental Policy Act (NEPA)
- The Endangered Species Act (ESA)
- The Federal Water Pollution Control Act (commonly referred to as the Clean Water Act)
- The National Historic Preservation Act (NHPA)
- The Migratory Bird Treaty Act (MBTA)
- The Migratory Bird Conservation Act
- The Clean Air Act (CAA)
- The Archeological Resources Protection Act (ARPA)
- The Paleontological Resources Preservation Act
- The Federal Cave Resources Protection Act of 1988
- The Safe Drinking Water Act (SDWA)
- The Noise Control Act
- The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA)
- The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
- The Archaeological and Historic Preservation
- The Antiquities Act
- The Historic Sites, Buildings, and Antiquities Act
- The Farmland Protection Policy Act
- The Federal Land Policy & Management Act (FLPMA)
- The Reclamation Project Act of 1939
- The National Fish and Wildlife Act of 1956
- The Fish and Wildlife Coordination Act
- The Administrative Procedure Act (APA)
- Rivers and Harbors Act of 1899
- The Eagle Protection Act
- The Native American Graves Protection and Repatriation Act (NAGPRA)
- The American Indian Religious Freedom Act
- The Religious Freedom Restoration Act

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