U.S. Customs and Border Protection

CBP Decisions

DEPARTMENT OF THE TREASURY

19 CFR Part 12

CBP Dec. 07–79

USCBP–2007–0074

RIN 1505–AB87

EXTENSION OF IMPORT RESTRICTIONS IMPOSED ON ARCHAEOLOGICAL MATERIAL FROM GUATEMALA

AGENCIES: U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends U.S. Customs and Border Protection (CBP) regulations to reflect the extension of import restrictions on certain archaeological material from Guatemala which were imposed by Treasury Decision (T.D.) 97–81 and extended by T.D. 02–56. The Acting Assistant Secretary for Educational and Cultural Affairs, United States Department of State, has determined that conditions continue to warrant the imposition of import restrictions. Accordingly, the restrictions will remain in effect for an additional 5 years, and the CBP regulations are being amended to indicate this second extension. These restrictions are being extended pursuant to determinations of the United States Department of State made under the terms of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. T.D. 97–81 contains the Designated List of archaeological material that describes the articles to which the restrictions apply.


SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to the provisions of the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention, codified into U.S. law as the Convention on Cultural Property Implementation Act (Pub. L. 97–446, 19 U.S.C. 2601 et seq.), the United States entered into a bilateral agreement with Guatemala on September 29, 1997, concerning the imposition of import restrictions on archaeological objects and materials from the pre-Columbian cultures of Guatemala. On October 3, 1997, the former United States Customs Service published T.D. 97–81 in the Federal Register (62 FR 51771), which amended 19 CFR 12.104g(a) to reflect the imposition of these restrictions, and included a list designating the types of archaeological objects and materials covered by the restrictions. The restrictions cover Maya material from the Peten Lowlands and related pre-Columbian material from the Highlands and the Southern Coast of Guatemala.

Prior to the issuance of T.D. 97–81, on April 15, 1991, the former United States Customs Service published T.D. 91–34 in the Federal Register (56 FR 15181), which imposed emergency import restrictions on certain archaeological material from the Peten Region of Guatemala. Under T.D. 91–34, §12.104g(b) (19 CFR 12.104g(b)) of the regulations pertaining to emergency restrictions was amended accordingly. These emergency restrictions were extended for a period of three years on November 7, 1994, under T.D. 94–84 (59 FR 55528). Subsequently, the same archaeological material covered by T.D. 91–34 (and the extension of T.D. 94–84) was subsumed in T.D. 97–81 when it was published in 1997, at which time the emergency restrictions of T.D. 91–34 (and T.D. 94–84) were removed from §12.104g(b).

Import restrictions listed in 19 CFR 12.104g(a) are “effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States. This period can be extended for additional periods not to exceed five years if it is determined that the factors which justified the initial agreement still pertain and no cause for suspension of the agreement exists” (19 CFR 12.104g(a)).

On September 30, 2002, the former United States Customs Service published T.D. 02–56 in the Federal Register (67 FR 61259), which
amended 19 CFR 12.104g(a) to reflect the extension of these import restrictions for an additional period of five years until September 29, 2007.

After reviewing the findings and recommendations of the Cultural Property Advisory Committee, and in response to a request by the Government of Guatemala, the Acting Assistant Secretary for Educational and Cultural Affairs, United States Department of State, concluding that the cultural heritage of Guatemala continues to be in jeopardy from pillage of archaeological materials, made the necessary determination to extend the import restrictions for an additional five years on July 18, 2007, and diplomatic notes have been exchanged, reflecting the extension of the restrictions. Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect the extension of the import restrictions.

The Designated List of Archaeological Material from Guatemala covered by these import restrictions is set forth in T.D. 97–81. The Designated List and accompanying image database may also be found at the following internet website address: http://exchanges.state.gov/culprop/gtimage.html.

The restrictions on the importation of these archaeological materials from Guatemala are to continue in effect for an additional 5 years. Importation of such material continues to be restricted unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATE

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

REGULATORY FLEXIBILITY ACT

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply.

EXECUTIVE ORDER 12866

Because this rule involves a foreign affairs function of the United States, it is not subject to Executive Order 12866.

SIGNING AUTHORITY

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).
LIST OF SUBJECTS IN 19 CFR PART 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise.

AMENDMENT TO CBP REGULATIONS

For the reasons set forth above, part 12 of Title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

PART 12 – SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

2. In § 12.104g(a), the table of the list of agreements imposing import restrictions on described articles of cultural property of State Parties is amended in the entry for Guatemala by removing the reference to “T.D. 02–56” and adding in its place “CBP Dec. 07–79” in the column headed “Decision No.”.

W. RALPH BASHAM,
Commissioner,
U.S. Customs and Border Protection.

Approved: September 21, 2007

TIMOTHY E. SKUD,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, September 26, 2007 (72 FR 54538)]
General Notice

USCBP–2007–0060

Notice of Availability of a Final Programmatic Environmental Assessment (PEA) and a Finding of No Significant Impact (FONSI) on the Western Hemisphere Travel Initiative in the Land and Sea Environments

AGENCY: Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Notice of Availability.

SUMMARY: A Final Programmatic Environmental Assessment (PEA) and Finding of No Significant Impact (FONSI) for the Western Hemisphere Travel Initiative (WHTI) in the Land and Sea Environments are available to the public for review. The Final PEA documents a review of potential environmental impacts. Based on the Final PEA, a determination was made that the travel documents proposed for WHTI and use of the travel documents for implementation of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) will not have a significant impact on the quality of the human environment such that it would require further analysis under the National Environmental Policy Act of 1969 (NEPA). The Final PEA addresses the substantive comments received on the Draft PEA during the public comment period. The Final PEA resulted in a FONSI that describes the programmatic action alternatives to be used as the approach to meet the requirements of WHTI. The Final PEA and FONSI are made available to the public in accordance with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA.

DATES: The Final PEA and FONSI will be available to the public on September 6, 2007.

ADDRESSES: Copies of the Final PEA and FONSI may be obtained by download through the Internet at http://www.cbp.gov/travel and http://www.regulations.gov or by writing to: CBP, 1300 Pennsylvania Avenue, NW., Room 5.4D, Attn: WHTI Environmental Assessment, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: U.S. Customs and Border Protection, WHTI Program Management Office, ATTN: Ms. Colleen Manaher, 1300 Pennsylvania Avenue, NW., Room 5.4D, Washington, DC 20229, (202) 344–3004, e-mail address: Colleen.M.Manaher@dhs.gov.

SUPPLEMENTARY INFORMATION: Section 7209 of IRTPA, as amended, provides that upon full implementation, U.S., Bermudian,
and Canadian citizens, and Mexican nationals would be required to present a passport or such alternative documents as the Secretary of Homeland Security designates as satisfactorily establishing identity and citizenship upon entering the United States.

In a Notice of Proposed Rulemaking (NPRM) published in the Federal Register on June 26, 2007 (72 FR 35088), DHS and the Department of State (DOS) described the second phase of a joint plan, known as WHTI, to implement these new requirements. The NPRM proposed the specific documents that U.S. citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico would be required to present when entering the U.S. at sea and land ports-of-entry from Western Hemisphere countries.

DHS and CBP have analyzed the potential impacts on the human environment of several alternate ways of implementing WHTI at sea and land ports-of-entry based on technological and operational considerations as part of the decision-making process. The impact analysis in the Final PEA and FONSI focuses primarily on the effects of implementing WHTI at land ports-of-entry because the land environment is the most sensitive to the proposed document and technological changes associated with implementation of WHTI.

Four technological and operational alternatives to meet the requirements to define and process secure, standardized travel documents under WHTI are analyzed in the PEA. The four alternatives are: (1) No-Action Alternative: maintain the status quo; (2) Standardized Documents Alternative: accept a limited number of document categories for admission at all sea or land ports-of-entry (LPOEs); (3) MRZ Alternative: accept standardized documents that contain a Machine Readable Zone (MRZ); and (4) RFID Alternative: accept standardized documents that contain Radio Frequency Identification (RFID) technology and an MRZ, for the use of RFID-enabled readers at the busiest LPOEs and MRZ at all LPOEs. As described in the PEA, air quality and noise are the primary resource areas that have the most potential to be affected by implementation of WHTI. However, no significant environmental impacts to these resources or any other human or natural environments from the implementation of any of the WHTI alternatives are anticipated.

Date: September 19, 2007

EUGENE H. SCHIED,
Assistant Commissioner,
Office of Finance.

[Published in the Federal Register, (72 FR 54671)]
Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Request for Public Comments Concerning Proposed Construction and Operation of Tactical Infrastructure for the U.S. Customs and Border Protection, Office of Border Patrol Rio Grande Valley (Texas) Sector


ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Request for Public Comments.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq., (NEPA), U.S. Customs and Border Protection (CBP), will prepare an Environmental Impact Statement (EIS) to identify and assess the potential impacts associated with a proposal to construct and operate tactical infrastructure along approximately 70 miles of the international border between the United States and Mexico within the Office of Border Patrol’s (OBP’s) Rio Grande Valley Sector, Texas (the Proposed Action). The purpose of the Proposed Action is to further CBP’s ability to gain effective control of the border by denying pedestrian and other access in high priority sections of OBP’s Rio Grande Valley Sector. CBP is the decision-making agency for the Proposed Action.

Notice is hereby given that the public scoping process has been initiated to prepare an EIS that will address the impacts and alternatives of the Proposed Action. The purpose of the scoping process is to solicit public comments regarding the range of issues, including potential impacts and alternatives that should be addressed in the EIS.

FOR FURTHER INFORMATION: Visit www.BorderFenceNEPA.com or email: information@borderFenceNEPA.com. Written requests for information may be submitted to: Charles McGregor, U.S. Army Corps of Engineers, Engineering Construction and Support Office, 819 Taylor St., Room 3A14, Fort Worth, Texas 76102; Phone: (817) 886–1585; and Fax: (817) 886–6404.

BACKGROUND: An EIS is being prepared in support of a proposal by OBP’s Rio Grande Valley Sector for controlling and deterring the influx of illegal immigration and contraband into the United States. In order to secure our nation’s borders, CBP is developing and deploying the most effective mix of proven technology, infrastructure, and increased personnel.

The Rio Grande Valley Sector includes the area along the international border between the United States and Mexico from Rio Grande City, Texas, to the Gulf of Mexico. In that area, CBP is proposing to install and operate tactical infrastructure consisting of pedestrian fences, supporting patrol roads, lights, and other infrastruc-
ture along approximately 70 miles of the U.S./Mexico international border (the Proposed Action). The Proposed Action includes the installation of tactical infrastructure in 21 segments along the international border in the vicinity of Rio Grande City, Texas; McAllen, Texas; Mercedes, Texas; Harlingen, Texas; Brownsville, Texas; and Fort Brown, Texas. Individual segments might range from approximately 1 mile to more than 13 miles. For much of its length, the proposed infrastructure will follow the International Boundary and Water Commission levee, but some portions will also encroach on multiple privately-owned land parcels. The infrastructure would cross multiple land use types, including rural, agricultural, suburban, and urban land. It may also encroach on portions of the Lower Rio Grande Valley National Wildlife Refuge and Texas state parks in the Rio Grande Valley.

Potential alternatives for the environmental impacts analysis will consider location, construction, and operation of tactical infrastructure. Alternatives must meet the need to gain effective control of our nation’s borders, as well as essential technical, engineering, and economic threshold requirements to ensure that a proposed action is environmentally sound, economically viable, and meets all applicable laws and regulations.


Consistent with 40 CFR 1508.28, the EIS will analyze the site-specific environmental impacts of the Proposed Action, which were broadly described in two previous programmatic EISs prepared by the former U.S. Immigration and Naturalization Service (INS) (which now fall under the responsibility of CBP), Department of Defense, and Joint Task Force 6 (JTF–6). The Programmatic EIS for JTF–6 Activities Along the U.S./Mexico Border, August 1994, and its supplementing document, Supplemental Programmatic EIS for INS and JTF–6 Activities, June 2001, were prepared to address the cumulative effects of past and reasonably foreseeable projects undertaken by JTF–6 for numerous law enforcement agencies within the four southwestern states (California, Arizona, New Mexico, and Texas). These documents can be obtained from the U.S. Army Corps of Engineers, Fort Worth District, Engineering Construction and Support Office website, at https://ecso.swf.usace.army.mil; by sending an email request to charles.mcgregor@swf02.usace.army.mil; or by mailing a request to Charles McGregor, U.S. Army Corps of Engineers, Engineering Construction and Support Office, 819 Taylor St., Room 3A14, Fort Worth, Texas 76102.

**PUBLIC PARTICIPATION:** Pursuant to the Council on Environmental Quality’s regulations, CBP invites public participation in the
NEPA process. This notice requests public participation in the scoping process, establishes a public comment period, and provides information on how to participate.

Public scoping is an open process for determining the scope of the EIS and identifying significant issues related to the Proposed Action. Anyone wishing to provide comments, suggestions, or relevant information on the Proposed Action may do so as follows:

You may submit comments to CBP by contacting SBInet, Tactical Infrastructure Program Office. To avoid duplication, please use only one of the following methods:

(a) Electronically through the web site at: www.BorderFenceNEPA.com;
(b) By email to: RGVcomments@borderFenceNEPA.com;
(c) By mail to: Rio Grande Valley PF–225 EIS, c/o e2M, 2751 Prosperity Avenue, Suite 200, Fairfax, Virginia 22031; or
(d) By fax to: (757) 282–7697.

Comments and related material must reach CBP by [insert date 20 days after date of publication in Federal Register]. CBP will consider all comments and material received during the NOI comment period. If you submit a comment, please include your name and address, and identify your comments as related to the Rio Grande Valley Sector EIS. Comments received after [insert date 20 days after date of publication in Federal Register] will receive responses following the publication of the draft EIS.

This scoping period is not the only opportunity you will have to comment. A draft EIS will be prepared, and prior to the development of a final EIS, CBP will release the draft EIS for public review. At that time, a Notice of Availability (NOA) will be published in the Federal Register, the Brownsville Herald (Brownsville, Texas), and The Monitor (McAllen, Texas). The NOA will announce the availability of the draft EIS, how to obtain a copy, and the dates, times, and places of any associated public informational meetings.

Date: September 19, 2007

EUGENE H. SCHIED,
Assistant Commissioner,
Office of Finance.

[Published in the Federal Register, September 24, 2007 (72 FR 54276)]
Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Request for Public Comments Concerning Proposed Construction and Operation of Tactical Infrastructure for the U.S. Customs and Border Protection, Office of Border Patrol San Diego Sector


ACTION: Notice of Intent to Prepare an Environmental Impact Statement and Request for Public Comments.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. (NEPA), U.S. Customs and Border Protection (CBP) will prepare an Environmental Impact Statement (EIS) to identify and assess the potential impacts associated with a proposal to construct and operate approximately four miles of tactical infrastructure and supporting patrol roads along the U.S./Mexico international border south of and adjacent to Otay Mountain Wilderness area in San Diego County, California (the Proposed Action). The purpose of the Proposed Action is to further CBP's ability to gain effective control of the border by denying pedestrian and other access in this high priority section of the Office of Border Patrol's (OBP's) San Diego Sector. CBP is the decision-making agency for this Proposed Action.

Notice is hereby given that the public scoping process has been initiated to prepare an EIS that will address the impacts and alternatives of the Proposed Action. The purpose of the scoping process is to solicit public comment regarding the range of issues, including potential impacts and alternatives that should be addressed in the EIS.

FOR FURTHER INFORMATION CONTACT: Visit www.BorderFenceNEPA.com or email: information@borderFenceNEPA.com. Written requests for information may be submitted to: Charles McGregor, U.S. Army Corps of Engineers, Engineering Construction and Support Office, 819 Taylor St., Room 3A14, Fort Worth, Texas 76102; Phone: (817) 886–1585; and Fax: (817) 886–6404.

BACKGROUND: An EIS is being prepared in support of a proposal by OBP's San Diego Sector for controlling and deterring the influx of illegal immigration and contraband into the United States. To assist Border Patrol officers, OBP is proposing to install and operate tactical infrastructure consisting of pedestrian fence, vehicle barriers, supporting patrol roads, lights, and other infrastructure along approximately four miles of the U.S./Mexico international border within OBP's San Diego Sector.

In order to secure the nation's borders, CBP is developing and deploying the most effective mix of proven technology, infrastructure, and increased personnel. In some locations, fencing is a critical ele-
ment of border security. OBP has identified this area of the border as a location where fence would significantly contribute to CBP’s priority mission homeland security. As a part of this Proposed Action, two segments of fence are proposed for construction.

One segment is approximately 3.4 miles long and would start at the Puebla Tree and end at boundary monument 250. The proposed segment would be adjacent to and south of the Otay Mountain Wilderness; would follow the Pack Truck Trail; and would not connect to any existing fence. The Otay Mountain Wilderness is on public lands administered by the Bureau of Land Management (BLM), U.S. Department of the Interior in San Diego County, California. The wilderness boundary is at least 100 feet from the U.S./Mexico border, and the proposed fence would occur in this corridor between the U.S./Mexico border and the wilderness boundary. However, due to steep topography, a portion of road or other tactical infrastructure might encroach into the wilderness area.

The second segment would be approximately 0.6 miles long and would connect with existing border fence west of Tecate. This fence segment is an extension of existing fence up Tecate Peak and would pass through a riparian area. This proposed fence segment would be on privately owned land.

Potential alternatives for environmental impacts analysis will consider location, construction, and operation of tactical infrastructure. Potential alternatives must meet the need to gain effective control of our nation’s borders, as well as essential technical, engineering, and economic threshold requirements to ensure that the Proposed Action is environmentally sound, economically viable, and meets all applicable laws and regulations.


Consistent with 40 CFR 1508.28, the EIS will analyze the site-specific environmental impacts of the proposed action which were broadly described in two previous programmatic EISs prepared by the former U.S. Immigration and Naturalization Service (which now falls under the responsibility of CBP), Department of Defense, and Joint Task Force 6 (JTF–6). The Programmatic EIS for JTF–6 Activities Along the U.S./Mexico Border, August 1994, and its supplementing document, Supplemental Programmatic EIS for INS and JTF–6 Activities, June 2001, were prepared to address the cumulative effects of past and reasonably foreseeable projects undertaken by JTF–6 for numerous law enforcement agencies within the four southwestern states (California, Arizona, New Mexico, and Texas). These documents can be obtained from the U.S. Army Corps of Engineers, Fort Worth District, Engineering Construction and Support

**PUBLIC PARTICIPATION:** Pursuant to the Council on Environmental Quality’s regulations, CBP invites public participation in the NEPA process. This notice requests public participation in the scoping process, establishes a public comment period, and provides information on how to participate.

Public scoping is an open process for determining the scope of the EIS and identifying significant issues related to the proposed action. Anyone wishing to provide comments, suggestions, or relevant information on the Proposed Action may do so as follows:

You may submit comments to CBP by contacting the SBInet, Tactical Infrastructure Program Office. To avoid duplication, please use only one of the following methods:

(a) Electronically through the web site at: www.BorderFenceNEPA.com;
(b) By email to: SDcomments@borderFenceNEPA.com;
(c) By mail to: San Diego Tactical Infrastructure EIS, c/o e²M, 2751 Prosperity Avenue, Suite 200, Fairfax, Virginia 22031; or
(d) By fax to: (757) 257–7643.

Comments and related material must reach CBP by [insert date 20 days after date of publication in Federal Register]. CBP will consider all comments and material received during the NOI comment period. If you submit a comment, please include your name and address, and identify your comments as for the San Diego Sector EIS. Comments received after [insert date 20 days after date of publication in Federal Register] will receive responses following the publication of the draft EIS.

This scoping period is not the only opportunity you will have to comment. A draft EIS will be prepared, and prior to the development of a final EIS, CBP will release the draft EIS for public review. At that time, a Notice of Availability (NOA) will be published in the Federal Register, the San Diego Union Tribune, and the San Diego Daily Transcript. The NOA will announce the availability of the draft EIS, how to obtain a copy, and the dates, times, and places of any associated public informational meetings.

Date: September 19, 2007

EUGENE H. SCHIED,
Assistant Commissioner,
Office of Finance.

[Published in the Federal Register, September 24, 2007 (72 FR 54277)]