DEPARTMENT OF HOMELAND SECURITY
Office of the Secretary

Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of determination.

SUMMARY: The Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations, and other legal requirements in order to ensure the expeditious construction of barriers and roads in the vicinity of the international land border near Tecate and Calexico, California.

DATES: This determination takes effect on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

SUPPLEMENTARY INFORMATION:

Important mission requirements of the Department of Homeland Security (“DHS”) include border security and the detection and prevention of illegal entry into the United States. Border security is critical to the nation’s national security. Recognizing the critical importance of border security, Congress has mandated DHS to achieve and maintain operational control of the international land border. Secure Fence Act of 2006, Public Law 109-367, § 2, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1701 note). Congress defined “operational control” as the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband. Id. Consistent with that mandate from Congress, the President’s Executive Order on Border Security and
Immigration Enforcement Improvements directed executive departments and agencies to deploy all lawful means to secure the southern border. Executive Order 13767, § 1. In order to achieve that end, the President directed, among other things, that I take immediate steps to prevent all unlawful entries into the United States, including the immediate construction of physical infrastructure to prevent illegal entry. Executive Order 13767, § 4(a).

DETERMINATION AND WAIVER:

Section 1

The United States Border Patrol’s (Border Patrol) San Diego and El Centro Sectors are areas of high illegal entry. In fiscal year 2018 alone, the Border Patrol apprehended over 38,000 illegal aliens attempting to enter the United States between border crossings in the San Diego Sector. In that same year, the Border Patrol had over 500 separate drug-related events between border crossings in the San Diego Sector, through which it seized approximately 8,700 pounds of marijuana, approximately 1,800 pounds of cocaine, over 175 pounds of heroin, and over 5,100 pounds of methamphetamine. In fiscal year 2018, the Border Patrol apprehended over 29,000 illegal aliens attempting to enter the United States between border crossings in the El Centro Sector. Also in fiscal year 2018, the Border Patrol had approximately 200 separate drug-related events between border crossings in the El Centro Sector, through which it seized over 620 pounds of marijuana, over 165 pounds of cocaine, over 56 pounds of heroin, and over 1,600 pounds of methamphetamine.

Due to the high levels of illegal entry within the San Diego and El Centro Sectors, I must use my authority under section 102 of IIRIRA to install additional physical barriers and roads in the San Diego and El Centro Sectors. Therefore, DHS will take immediate action to replace existing barriers in the San Diego and El Centro Sectors. The segments of the border within which such construction will occur are referred to herein as the “project areas” and are more specifically described in Section 2 below. Congress provided funding for these projects in the Fiscal Year 2018 DHS Appropriations Act, Public Law 115-141, Division F, Title II, § 230.

The replacement of primary fencing within the project areas will further the Border Patrol’s ability to deter and prevent illegal crossings. The existing barriers were constructed
between the early-to-mid 1990s and mid-to-late 2000s. The existing barriers will be replaced with 18 to 30 foot barriers that employ a more operationally effective design that is intended to meet the Border Patrol’s operational requirements. In addition, DHS will, where necessary, make improvements to existing roads within the project areas.

Section 2

I determine that the following areas in the vicinity of the United States border, located in the State of California within the Border Patrol’s San Diego and El Centro Sectors, are areas of high illegal entry (the “project areas”):

- Within the San Diego Sector, starting approximately one mile west of Border Monument 245 and extending east to approximately one mile east of Border Monument 243;
- Within the El Centro Sector, starting approximately one and one-half (1.5) miles west of Border Monument 223 and extending east approximately eight miles; and
- Within the El Centro Sector, starting at Border Monument 221 and extending east to Border Monument 219.

There is presently an acute and immediate need to construct physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States in the project areas pursuant to sections 102(a) and 102(b) of IIRIRA. In order to ensure the expeditious construction of the barriers and roads in the project areas, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of IIRIRA.

Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to the construction of roads and physical barriers (including, but not limited to, accessing the project areas, creating and using staging areas, the conduct of earthwork, excavation, fill, and
site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, safety features, lighting, cameras, and sensors) in the project areas, all of the following statutes, including all federal, state, or other laws, regulations, and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended:


This waiver does not revoke or supersede the previous waivers published in the Federal Register on April 8, 2008 (73 FR 19078), and on September 12, 2017 (82 FR 42829), which shall remain in full force and effect in accordance with their terms. I reserve the authority to execute further waivers from time to time as I may determine to be necessary under section 102 of IIRIRA.

Kevin K. McAleenan,

Acting Secretary of Homeland Security.

[FR Doc. 2019-10078 Filed: 5/14/2019 8:45 am; Publication Date: 5/15/2019]