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 in Cochise County and Pima County, Arizona.

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) Tucson Sector is an area of high illegal entry. In fiscal year 2018, the Border Patrol apprehended over 52,000 illegal aliens attempting to enter the United States between border crossings in the Tucson Sector. Also in fiscal year 2018, the Border Patrol had over 1,900 separate drug-related events between border crossings in the Tucson Sector, through which it seized over 134,000 pounds of marijuana, 62 pounds of cocaine, over 91 pounds of heroin, and over 902 pounds of methamphetamine. Additionally, Cochise and Pima Counties, which are within the Tucson Sector, have been identified as High Intensity Drug Trafficking Areas by the Office of National Drug Control Policy.

During the high levels of illegal entry of people and drugs within the Tucson Sector, I must use my authority under Section 102 of IIRIRA to install additional physical barriers and roads in the Tucson Sector. Therefore, DHS will take immediate action to replace existing barriers in the Tucson Sector. Construction will occur along four separate segments of the border, which are referred to herein as the “project areas” and more specifically described in Section 2 below.

The existing barriers within the project areas include both vehicle fencing and outmoded pedestrian fencing that no longer satisfy Border Patrol’s operational needs. Transnational criminal organizations known for smuggling drugs and aliens into United States from Mexico are known to operate in the area. These transnational criminal organizations have been able to use the lack of adequate infrastructure and the surrounding terrain, which provides high ground for scouts seeking to protect and warn smugglers moving through the area, to their advantage. Therefore, Border Patrol requires a more effective barrier. The existing vehicle barriers and
outmoded pedestrian fencing will be replaced with an 18 to 30 foot barrier that employs a more operationally effective design. In addition, roads will be constructed or improved and lighting will be installed.

To support DHS’s action under Section 102 of IIRIRA, DHS requested that the Department of Defense, pursuant to 10 U.S.C. § 284(b)(7), assist by constructing fence, roads, and lighting within the Tucson Sector in order to block drug smuggling corridors across the international boundary between the United States and Mexico. The Acting Secretary of Defense has concluded that the support requested satisfies the statutory requirements of 10 U.S.C. § 284(b)(7) and that the Department of Defense will provide such support in the project areas described in Section 2 below.

**Section 2**

I determine that the following areas in the vicinity of the United States border, located in the State of Arizona within the United States Border Patrol’s Tucson Sector, are areas of high illegal entry (the “project areas”):

- Starting approximately one-half (.5) mile west of Border Monument 178 and extending east to Border Monument 162;
- Starting at Border Monument 100 and extending east for approximately one (1) mile;
- Starting at Border Monument 98 and extending east to Border Monument 97; and
- Starting approximately one-half (.5) mile west of Border Monument 83 and extending east to Border Monument 74.

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 physical barriers and roads (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 October 26, 2007 (72 FR 60870), and April 8, 2008 (73 FR 19078), 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

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