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 Acting 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 Pima County, Arizona, Santa Cruz County, Arizona, and Cochise 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, section 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, section 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, section 4(a).

DETERMINATION AND WAIVER:

Section 1

The United States Border Patrol’s Tucson Sector is an area of high illegal entry. In fiscal year 2019, the United States Border Patrol (“Border Patrol”) apprehended over 63,000 illegal aliens attempting to enter the United States between border crossings in the Tucson Sector. Also in fiscal year 2019, there were over 1,200 drug-related events between border crossings in the Tucson Sector, through which Border Patrol seized over 59,000 pounds of marijuana, over 150 pounds of cocaine, over 155 pounds of heroin, over 2,700 pounds of methamphetamine, and over 12 pounds of fentanyl. Additionally, Pima County, Arizona, Santa Cruz County, Arizona, and Cochise County, Arizona, which are located in the Tucson Sector, have been identified as a High Intensity Drug Trafficking Area by the Office of National Drug Control Policy.

Due to 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 construct new primary and secondary fencing and replace existing pedestrian and secondary fencing in the Tucson Sector. The segments within which such construction will occur are referred to herein as the “project areas” and are more specifically described in Section 2 below.

The lack of adequate barriers, either due to a complete absence of barrier or ineffective primary or secondary fencing that no longer meet Border Patrol’s operational needs, continues to be particularly problematic as it pertains to the trafficking of illegal narcotics in the Tucson Sector. The replacement of outmoded primary and secondary fencing and the construction of new primary pedestrian fencing will add much needed infrastructure in the Tucson Sector. The added impedance capability will slow or stop illegal activity, afford Border Patrol more time to
respond, and increase the likelihood of interdiction. Within the project areas roads will also be constructed or improved and lighting will be installed.

To support DHS’s action under section 102 of IIRIRA, I requested that the Secretary 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 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 two (2) miles north and west of Border Monument 140 and extending south and east to approximately one and one-half (1.5) miles east of Border Monument 124;
- Starting approximately one (1) mile west of Border Monument 116 and extending east to approximately one mile (1) east of Border Monument 100;
- Starting at approximately Border Monument 98 and extending east for approximately 10 miles;
- Starting approximately one-half (0.5) of a mile west of the Naco Port of Entry and extending east to approximately Border Monument 92;
- Starting approximately one-half (0.5) of a mile west of Border Monument 91 and extending east for approximately 16 miles;
Starting approximately one-half (0.5) of a mile east of Border Monument 83 and extending west for two (2) miles; and
Starting approximately one-half (0.5) of a mile west of Border Monument 74 and extending east to the Arizona – New Mexico state line.

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: The National Environmental Policy Act (Pub. L. 91-190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 et seq.)); the Endangered Species Act (Pub. L. 93-205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 et seq.)); the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act (33 U.S.C. 1251 et seq.)); the National Historic Preservation Act (Pub. L. 89-665, 80 Stat. 915 (Oct. 15, 1966), as amended, repealed, or replaced by Pub. L. 113-287, 128 Stat. 3094 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 470 et seq., now codified at 54 U.S.C. 100101 note and 54 U.S.C. 300101 et seq.)); the Migratory Bird Treaty Act (16 U.S.C. 703 et

This waiver does not revoke or supersede any other waiver determination made pursuant to section 102(c) of IIRIRA. Such waivers 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.


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Chad F. Wolf,
Acting Secretary of Homeland Security
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