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 May 15, 2019.

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).


In section 102(a) of IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In section 102(b) of IIRIRA, Congress mandated the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border. Finally, in section 102(c) of IIRIRA, Congress granted to the Secretary of Homeland Security the
authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA.

**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.

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 Imperial County, California.

DATES: This determination takes effect on May 15, 2019.

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) El Centro Sector is an area of high illegal entry. 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. Additionally, Imperial County, California, which is located in the El Centro Sector, has 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 El Centro Sector, I must use my authority under section 102 of IIRIRA to install additional physical barriers and roads in the El Centro Sector. Therefore, DHS will take immediate action to replace existing vehicle barriers in the El Centro Sector. The segment within which such construction will occur is referred to herein as the “project area” and is more