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(Catalogue of Federal Domestic Assistance Program Nos. 93.3065, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 22, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

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## 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 by Section 102 of the REAL ID Act of 2005 and as Amended by the Secure Fence Act of 2006**

**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 physical barriers and roads in the vicinity of the international land border of the United States in Arizona.

**DATES:** This Notice is effective on October 26, 2007.

#### **Determination and Waiver**

In section 102(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208, Div. C, 110 Stat. 3009-546, 3009-554 (Sept. 30, 1996) (IIRIRA) (8 U.S.C. 1103 note (2000)), Congress provided that the Attorney General 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. Pursuant to sections 1511 and 1517 of the Homeland Security Act of 2002, Public Law 107-296, 116 Stat. 2135, 2309, 2311 (Nov. 25, 2002) (HSA) (6 U.S.C. 551, 557), the authorities of the Attorney General contained in section 102 of the IIRIRA were transferred to me. In section 102(c) of the IIRIRA, as amended by section 102 of the REAL ID

Act of 2005, Public Law 109-13, Div. B, 119 Stat. 231, 302, 306 (May 11, 2005) (REAL ID Act) (8 U.S.C. 1103 note), Congress granted to me the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads under section 102 of IIRIRA.

I determine that the area in the vicinity of the United States border from approximately 4.75 miles west of the Naco, Arizona Port of Entry to the western boundary of the San Pedro Riparian National Conservation Area (SPRNCA) in southeastern Arizona including the lands covered by the Temporary Restraining Order (TRO) signed by Judge Ellen S. Huvelle on October 10, 2007, in the case of *Defenders of Wildlife et al. v. Bureau of Land Management et al.*, Case 1:07-cv-01801-ESH, is an area of high illegal entry. There is presently a need to construct fixed and mobile barriers (such as fencing, vehicle barriers, towers, sensors, cameras, and other surveillance, communication, and detection equipment) and roads in the vicinity of the border of the United States. In order to ensure the expeditious construction of the barriers and roads that Congress prescribed in the IIRIRA in the area starting approximately 4.75 miles west of the Naco, Arizona Port of Entry to the western boundary of the SPRNCA and any and all land covered by the TRO, which is an area of high illegal entry into the United States, I have determined that it is necessary that I exercise the authority that was transferred to me by sections 1511 and 1517 of the HSA and that is vested in me by section 102(c) of the IIRIRA as amended by section 102 of the REAL ID Act. Accordingly, I hereby waive in their entirety, with respect to the construction of roads and fixed and mobile barriers (including, but not limited to, accessing the project area, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of fences, roads, supporting elements, drainage, erosion controls, safety features, surveillance, communication, and detection equipment of all types, radar and radio towers, and lighting) in the area starting approximately 4.75 miles west of the Naco, Arizona Port of Entry to the western boundary of the SPRNCA and any and all land covered by the TRO, all federal, state, or other laws, regulations and legal requirements of, deriving from, or related to the subject of, the following laws, 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) (Act of June 30, 1948, c. 758, 62 Stat. 1155 (33 U.S.C. 1251 *et seq.*)), the National Historic Preservation Act (Pub. L. 89-665, 80 Stat. 915 (Oct. 15, 1966) (16 U.S.C. 470 *et seq.*)), the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*), the Clean Air Act (42 U.S.C. 7401 *et seq.*), the Archeological Resources Protection Act (Pub. L. 96-95, 16 U.S.C. 470aa *et seq.*), the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*), the Noise Control Act (42 U.S.C. 4901 *et seq.*), the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*), the Federal Land Policy and Management Act (Pub. L. 94-579, 43 U.S.C. 1701 *et seq.*), the Fish and Wildlife Coordination Act (Pub. L. 73-121, 48 Stat. 401, 16 U.S.C. 661 *et seq.*), the Archaeological and Historic Preservation Act (Pub. L. 86-523, 16 U.S.C. 469 *et seq.*), the Antiquities Act (16 U.S.C. 431 *et seq.*), the Historic Sites, Buildings, and Antiquities Act (16 U.S.C. 461 *et seq.*), the Arizona-Idaho Conservation Act of 1988 (Pub. L. 100-696, 16 U.S.C. 460xx *et seq.*), the Wild and Scenic Rivers Act (Pub. L. 90-542, 16 U.S.C. 1281 *et seq.*), the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*) and the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). I reserve the authority to make further waivers from time to time under the authority granted to me by section 102(c) of the IIRIRA, as amended by section 102 of the REAL ID Act, as I may determine to be necessary to accomplish the provisions of section 102 of IIRIRA.

Dated: October 19, 2007.

**Michael Chertoff,**

*Secretary of Homeland Security.*

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