Case Number: 2016-0152-F

FOIA MARKER

This is not a textual record. This is used as an administrative marker by the Clinton Presidential Library Staff.

Folder Title: Chron File - January 1994 #1 [5]				
Staff Office-Individual: Defense Policy-Bell, Robert				
Original OA/ID Number: 263				
Row: 31	Section: 3	Shelf: 4	Position: 1	Stack: V

Withdrawal/Redaction Sheet
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. memo	For Executive Secretary, National Security Council. Subject: Significant Military Exercise - ASAD AL BAHR 94. (1 page)	01/13/1994	P1/b(1)
001b. cable	re: Part I Significant Military Exercise Brief [Asad Al Bahr] (1 page)	01/11/1994	P1/b(1)
002. memo	For Anthony Lake from Robert Bell. Subject: Meeting with John Holum. Record ID: 9400454. (4 pages)	01/20/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Defense Policy and Arms Control (Robert Bell)
OA/Box Number: 263

FOLDER TITLE:

Chron File - January 1994 #1 [5]

2016-0152-F
vz4526

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

January 18, 1994

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: ROBERT BELL RbB

FROM: PETER FEAVER PDF

SUBJECT: Letter to President from Representative Klink et al. re. Current Policy of Stockpiling of High Grade Zinc for Coinage

Tab I is a memorandum to the President covering a proposed response (Tab A of Tab I) to a letter from Representative Klink and Senators Specter and Wofford (Tab B of Tab I) concerning our current policy on the disposition of the national zinc stockpile.

Concurrences by: Steve Jones and Jeremy Rosner

RECOMMENDATION

That you sign and forward the memorandum to the President at Tab I.

Attachments
Tab I Memorandum to the President
 Tab A Proposed Response to Representative Klink et al.
 Tab B Incoming Correspondence

THE WHITE HOUSE

WASHINGTON

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE
SUSAN BROPHY

SUBJECT: Letter to the President from Representative Klink et al. Re Current Policy of Stockpiling of High Grade Zinc for Coinage

Purpose

To respond to a letter from Representative Klink, Senator Specter and Senator Wofford who have written to you concerning the Administration's current policy on the disposition of the national zinc stockpile.

Background

At Tab B, Representative Klink, Senator Specter and Senator Wofford have written to you to complain about alleged dumping of zinc from the national stockpile. They claim that selling the surplus zinc has depressed world zinc prices, costing jobs in Pennsylvania's zinc-mining communities. Instead of selling the zinc on the open market, they recommend that you direct the National Mint to use the zinc in the minting of pennies. They dispute the Mint's claim that the stockpile zinc is inappropriate for the minting of pennies. Tab A is a proposed response from you explaining why the stockpile zinc is sold at prices slightly under the world market and indicating that the National Mint is studying the issue of using stockpile zinc to mint pennies.

RECOMMENDATION

That you sign the proposed letters to Representative Klink, Senator Spector and Senator Wofford.

Attachments
Tab A Proposed Response Letters
Tab B Incoming Correspondence

cc: Vice President
Chief of Staff

THE WHITE HOUSE

WASHINGTON

Dear Representative Klink:

Thank you for writing about the disposition of the zinc in the National Stockpile. I share your concern for the domestic zinc industry and this Administration is conducting a review of our Stockpile policy.

I want to assure you that Stockpile zinc is not being "dumped" on the domestic market. Because the zinc is sold "as is, where is," it does not command top market prices. However, Stockpile sales represent such a small percentage of world consumption, approximately .036%, that this is not seen as causing the drop in world prices.

The National Mint is currently reviewing the suitability of the Stockpile zinc for the minting of pennies. If the zinc does meet Mint standards, a direct transfer would be appropriate.

I appreciate your taking the time to let me know of your views on this issue.

Sincerely,

The Honorable Ron Klink
House of Representatives
Washington, D.C. 20515

THE WHITE HOUSE

WASHINGTON

Dear Senator Wofford:

Thank you for writing about the disposition of the zinc in the National Stockpile. I share your concern for the domestic zinc industry and this Administration is conducting a review of our Stockpile policy.

I want to assure you that Stockpile zinc is not being "dumped" on the domestic market. Because the zinc is sold "as is, where is," it does not command top market prices. However, Stockpile sales represent such a small percentage of world consumption, approximately .036%, that this is not seen as causing the drop in world prices.

The National Mint is currently reviewing the suitability of the Stockpile zinc for the minting of pennies. If the zinc does meet Mint standards, a direct transfer would be appropriate.

I appreciate your taking the time to let me know of your views on this issue.

Sincerely,

The Honorable Harris Wofford
United States Senate
Washington, D.C. 20510

THE WHITE HOUSE

WASHINGTON

Dear Senator Specter:

Thank you for writing about the disposition of the zinc in the National Stockpile. I share your concern for the domestic zinc industry and this Administration is conducting a review of our Stockpile policy.

I want to assure you that Stockpile zinc is not being "dumped" on the domestic market. Because the zinc is sold "as is, where is," it does not command top market prices. However, Stockpile sales represent such a small percentage of world consumption, approximately .036%, that this is not seen as causing the drop in world prices.

The National Mint is currently reviewing the suitability of the Stockpile zinc for the minting of pennies. If the zinc does meet Mint standards, a direct transfer would be appropriate.

I appreciate your taking the time to let me know of your views on this issue.

Sincerely,

The Honorable Arlen Specter
United States Senate
Washington, D.C. 20510

0265

94 JAN 7 P2:11

Congress of the United States
Washington, DC 20515

January 6, 1994

The Honorable William J. Clinton
President of the United States
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Mr. President:

We write to convey our concerns about current policy of both the Treasury Department and the Department of Defense related to two issues. These issues are the Department of Defense's continued sale of stockpiled zinc in a suffering domestic market and the Treasury Department's continued use of outdated and arbitrary quality standards for materials used in the minting of pennies. The combined results of these policies are both a direct waste of about $3 million in taxpayer resources this year, and an additional threat to at least 700 domestic zinc industry jobs in western Pennsylvania alone.

As an example, in mid-September while the Mint purchased 6.5 million pounds of zinc on the international market at approximately 43 cents per pound, the Department of Defense (DOD) Defense Logistics Agency (DLA) dumped 4.6 million pounds of zinc (suitable for coinage by ASTM standards) on the domestic market at 38 cents per pound. DLA sales compete directly with the domestic zinc industry which is staggering from the lowest prices in over 40 years, while the Mint pays top dollar for the same material from predominantly foreign sources.

Although the benchmark independent authority, the American Society for Testing and Materials (ASTM) maintains that "high grade" zinc is quite suitable for coinage, current U.S. Mint policy allows the Mint to purchase only "special high grade" zinc in the manufacture of pennies. This policy results in both a waste of tax dollars and a threat to American jobs.

For the past year and a half the Defense Logistics Agency has been selling off quantities of materials deemed excess to the National Defense Stock Pile. During this period the price of zinc has dropped by 35 percent. This has been done at a time when the world zinc market was already experiencing an all-time low due to a variety of factors. As a result, many jobs have been lost not only to competition from foreign producers but incredibly to the Federal Government from "dumping" zinc on the domestic market. Although we believe that the current DLA practices herein described run afoul of the statutory limitation in the Strategic and Critical Materials Stock Piling Act, 50 U.S.C. 98 (et cet.), that disposal be conducted in a way so as to "avoid undue market disruption," we offer a constructive alternative which suits the needs of all concerned parties.

In the spirit of your pledge to reinvent government and to eliminate government waste, the Congress in its recent passage of H.R. 3116, Department of Defense Appropriations for FY 1994 has offered a solution to our concerns. Direct purchase by the mint of both "high grade" and "special high grade" zinc from the DOD Strategic Materials Stockpile can provide the Mint with its reqirements of suitable zinc at a lower cost to the taxpayer. At the same time, such a transaction would enable DOD to fulfill its need to reduce stockpiled inventory without further harm to the domestic zinc industry, one of the largest remaining industrial employers in Western Pennsylvania. However, to date, neither agency has moved to address these problems.

Most of the zinc being sold by DLA can be used to make the penny. The Mint predicts it will need to purchase 66.1 million pounds for FY 1994 -- nearly the total amount of zinc authorized for sale by DLA this year. Unfortunately, the Mint now buys zinc at much higher prices than those at which DOD is selling the metal.

The Congress recognized this and in the FY 1994 DOD Appropriations bill called upon DOD to cease sales until it reports upon the impact of such sales on the apparently disregarded domestic production market, and the feasibility of transferring already-owned zinc to the Mint for coinage. The Senate Appropriations Committee Report contained this directive which was receded to by the House with additional language reaffirming (1) the accepted metallurgical standard for zinc for coinage is ASTM as opposed to Treasury preferences, and (2) the longer-term policy objective of directing all available zinc for coinage to avoid further destruction of our domestic production base. As yet we have seen no action.

Mr. President, we respectfully urge your support to move the Departments of Treasury and Defense, as indicated in H.R. 3116, to actively cooperate on this matter. At present, Treasury officials incorrectly insist that the Mint cannot use stockpiled "high grade" zinc for coinage. The nature and urgency of this matter requires the attention of your office. Our mutual goal of common sense approaches to government contributes to our optimism that we may soon resolve this matter. We look forward to your response.

Sincerely,

Ron Klink
Member of Congress

Arlen Specter
U.S. Senate

Harris Wofford
U.S. Senate

050023

94 JAN 7 P2:11

Congress of the United States
Washington, DC 20515

January 6, 1994

The Honorable William J. Clinton
President of the United States
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Mr. President:

We write to convey our concerns about current policy of both the Treasury Department and the Department of Defense related to two issues. These issues are the Department of Defense's continued sale of stockpiled zinc in a suffering domestic market and the Treasury Department's continued use of outdated and arbitrary quality standards for materials used in the minting of pennies. The combined results of these policies are both a direct waste of about $3 million in taxpayer resources this year, and an additional threat to at least 700 domestic zinc industry jobs in western Pennsylvania alone.

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Sincerely,

Ron Klink
Member of Congress

Arlen Specter
U.S. Senate

Harris Wofford
U.S. Senate

~~SECRET~~
NSC/RMO PROFILE

RECORD ID: 9400363
RECEIVED: 15 JAN 94 11

TO: MCALEER, R

FROM: ITOH

DOC DATE: 19 JAN 94
SOURCE REF:

KEYWORDS: MILITARY EXERCISES OMAN

PERSONS:

SUBJECT: SIGNIFICANT MILITARY EXERCISE ASAD AL BAHR 94

ACTION: ITOH SGD MEMO DUE DATE: 19 JAN 94 STATUS: C

STAFF OFFICER: HAHN LOGREF:

FILES: WH NSCP: CODES:

D O C U M E N T D I S T R I B U T I O N

FOR ACTION	FOR CONCURRENCE	FOR INFO
		BELL
		HAHN
		INDYK
		LAIPSON
		NSC CHRON

COMMENTS: ____________

DISPATCHED BY ____________ DATE ____________ BY HAND W/ATTCH

OPENED BY: NSJDA CLOSED BY: NSGP DOC 3 OF 3

~~SECRET~~

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

January 19, 1994

MEMORANDUM FOR COL. ROBERT P. MCALEER
Executive Secretary
Department of Defense

SUBJECT: Significant Military Exercise ASAD AL BAHR 94

Military exercise ASAD AL BAHR 94 is approved.

William H. Itoh
Executive Secretary

~~SECRET~~ ~~SECRET~~ 0363

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

January 18, 1994

ACTION

MEMORANDUM FOR WILLIAM H. ITOH

THROUGH: ROBERT BELL RB

FROM: KEITH HAHN KH

SUBJECT: Significant Military Exercise ASAD AL BAHR 94

Attached at Tab I is a proposed memorandum to the Executive Secretary, Department of Defense, approving military exercise ASAD AL BAHR 94. At Tab II Defense recommends approval and State concurs.

ASAD AL BAHR 94 is a small scale exercise with the Omani Navy involving one U.S. P-3C maritime patrol aircraft. It will consist of practice aircraft identification by an Omani surface action group, surface contact reporting and anti-air warfare procedures. It is scheduled to take place January 23-24 in the north Arabian Sea and Arabian Gulf.

The critical cancellation date is January 21, 1994.

Concurrences by: Ellen Laipson and Martin Indyk

RECOMMENDATION

That you sign the memorandum at Tab I approving the exercise.

Attachments
Tab I Memorandum for Signature
Tab II OSD Executive Secretary Memorandum, January 13, 1994

DECLASSIFIED
E.O. 13526
White House Guidelines, September 11, 2006
By VL NARA, Date 4/7/2016

~~SECRET~~ ~~SECRET~~
Declassify on: OADR

Withdrawal/Redaction Marker
Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. memo	For Executive Secretary, National Security Council. Subject: Significant Military Exercise - ASAD AL BAHR 94. (1 page)	01/13/1994	P1/b(1)

COLLECTION:

Clinton Presidential Records
National Security Council
Defense Policy and Arms Control (Robert Bell)
OA/Box Number: 263

FOLDER TITLE:

Chron File - January 1994 #1 [5]

2016-0152-F
vz4526

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C. Closed in accordance with restrictions contained in donor's deed of gift.
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Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Withdrawal/Redaction Marker
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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001b. cable	re: Part I Significant Military Exercise Brief [Asad Al Bahr] (1 page)	01/11/1994	P1/b(1)

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NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

January 19, 1994

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: ROBERT BELL RGB

FROM: PETER FEAVER PDF

SUBJECT: Letter to Lake Re. Interventions and Non-Interventions by United States

James Meernik, an Assistant Professor of Political Science at the University of North Texas, has written to you (Tab II) requesting a list of "the names of former or current government officials, high or low who might like to discuss their perspective on the decision-making processes that proceeded {sic} U.S. interventions in places like Panama and Somalia."

As a hungry junior professor myself, I am generally predisposed to requests for research interviews. But I believe it would be inappropriate for you to supply Dr. Meernik with the list he desires. For starters, he should be able to assemble a list of the key actors on his own by carefully examining news accounts. Moreover, if you oblige him with a list, you may unintentionally put those officials in the awkward position of assuming that you have directed that they agree to be interviewed. His project does have merit, however, and I do think it would be appropriate to agree to a brief personal interview, if you wish.

Accordingly, my proposed response (Tab I) demurs but with the offer of a personal interview.

RECOMMENDATION

That you sign the letter to Professor Meernik at Tab I.

Attachments
Tab I Proposed Letter to Professor Meernik
Tab II Incoming Correspondence

THE WHITE HOUSE

WASHINGTON

Dear Professor Meernik:

Thank you for writing. Your topic is important and I look forward to seeing the results of your study.

I regret that I am unable to supply you with the list you requested. Nevertheless, I think you will find that the news media have already identified most of the key players on the issues of interest to you. Perhaps you could write to them directly to ascertain whether they are available for an interview.

I will meet with you if a convenient time can be arranged. However, since the issues with which I have been involved are still unfolding, I would be severely constrained in what I can say.

Sincerely,

Anthony Lake
Assistant to the President
for National Security Affairs

Dr. James Meernik
Assistant Professor of Political Science
University of North Texas
Denton, TX 76203

Sel Staff
0385

University of North Texas

College of Arts and Sciences
Department of Political Science

1/12/94

Mr. Anthony Lake
Assistant to the President for National Security
The White House
1600 Pennsylvania Avenue NW
Washington, D.C. 20500

Dear Mr. Lake,

I am a professor in the Department of Political Science at the University of North Texas in Denton, Texas currently at work on a book about United States defense policy in Central America. I am particularly interested in U.S. military interventions, such as occurred in Grenada in 1983 and Panama in 1989. Most scholars who write about this topic only examine cases where there was a full-fledged invasion. I am interested in examining why the United States chose to intervene in some foreign nations and not in others. It would be of great assistance to me if you might furnish me with the names of former or current government officials, high or low who might like to discuss their perspective on the decision-making processes that proceeded U.S. interventions in places like Panama and Somalia, and non-interventions in nations such as Haiti and Bosnia. I am not interested in assigning fault or blame to anyone or to taking a particular ideological viewpoint regarding any of these events. I merely would like to offer a more well-rounded discussion of cases where there were and were not interventions. I would, of course, maintain the confidentiality of all those whom I might interview. Thank you in advance for any assistance you might offer. Please contact me if you have any questions.

Sincerely,

James Meernik

James Meernik, Assistant Professor
Department of Political Science
University of North Texas
Denton, TX 76203
(817) 565-4233
Fax: (817) 565-4818

CURRICULUM VITA
January 1, 1994

JAMES DAVID MEERNIK

Department of Political Science
144 Wooten Hall
University of North Texas
Denton, TX 76203

Home: (817) 382-7193
Work: (817) 565-4233

Education

B.A. Grand Valley State University
Political Science and Psychology
May 1985

M.A. Michigan State University
Political Science
September, 1988

Ph.D. Michigan State University
Political Science
February, 1992

Dissertation: **Presidential Decision Making and The Political Use of Military Force**
Charles W. Ostrom, Jr., Chairperson

Professional Papers

"Support of Republican Presidents in the U.S. House of Representatives: 1953-1986". Delivered at 1989 Annual Meeting of the Midwest Political Science Association in Chicago IL.

"The Persian Gulf War and American Foreign Policy Attitudes: Public Support For a New World Order". Co-authored with Prof. Valerie Martinez, University of North Texas. Invited to present at the Brookings Institution, "Political Consequences of War" conference, February, 1992 in Washington D.C..

"Presidential Support in Congress: Conflict and Consensus on Foreign and Defense Policy". Delivered at the 1992 Annual Meeting of the Southwestern Social Science Association Meeting in Austin, TX.

"Presidential Decision Making and the Political Use of Military Force". Delivered at the 1992 Annual Meeting of the Midwest Political Science Association in Chicago, IL.

"Explaining Congressional Attempts to Reverse Supreme Court Decisions". Co-authored with Prof. Joseph Ignagni, University of Texas at Arlington. Delivered at the 1992 Annual Meeting of the American Political Science Association in Chicago, IL.

"The Persian Gulf War and American Foreign Policy Attitudes: Public Support For a New World Order". Co-authored with Prof. Valerie Martinez, University of North Texas. Delivered at the 1992 Annual Meeting of the American Political Science Association in Chicago, IL.

"Congress vs. the Supreme Court: Explaining Congressional Attacks on Court Rulings Regarding State and Local Laws". Co-authored with Joseph Ignagni, University of Texas, Arlington. Delivered at the 1993 Annual Meeting of the American Political Science Association in Washington D.C..

Publications.

1993. "Presidential Support in Congress: Conflict and Consensus on Foreign and Defense Policy". Journal of Politics. 55:569-587.

"Explaining Congressional Attempts to Reverse Supreme Court Decisions", co-authored with Joseph Ignagni (University of Texas, Arlington) accepted for publication in Summer, 1994, Political Research Quarterly.

"Presidential Decision Making and the Political Use of Military Force", accepted for publication in March, 1994, International Studies Quarterly.

"U.S. Military Aid in the Eighties: A Global Analysis" co-authored with Steven Poe (University of North Texas), accepted for publication in Journal of Peace Research.

Teaching Experience

University of North Texas

PSCI 1050	American Government
PSCI 3810	Introduction to International Relations
PSCI 4840	American National Security Policy
PSCI 5340	Scope and Methods of Political Science
PSCI 5800	Introduction to International Relations
PSCI 5820	International Conflict

Research Interests

American national security and foreign policy, particularly the use of military force.
Institutional conflict between the Congress and the president over the military.
Institutional conflict between the Congress and the Supreme Court.

Academic Honors and Awards

1991 University of North Texas Research Initiation Grant award winner.
1992 University of North Texas Research Initiation Grant award winner.

Administrative

Member of Graduate Studies Committee 1991-1992
Elections Judge 1991-1992
Chairman of Grants and Awards Committee 1992-1993
Member of Judicial Process/Public Law Search Committee 1992-1993
Chairman, Graduate Studies Committee 1993-1994
Member of Grants and Awards Committee 1993-1994

Professional References

Professor R. Kenneth Godwin. (817) 565-2328
Department of Political Science
University of North Texas
Denton, TX 76203

Professor David W. Rohde (904) 392-0262
Department of Political Science
University of Florida
Gainesville, FL 32611

Professor Brian Silver (517) 355-6592
Department of Political Science
Michigan State University
East Lansing, MI 48824-1032

Professor Steven Poe (817) 565-2325
Department of Political Science
University of North Texas
Denton, TX 76203

Withdrawal/Redaction Marker
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2016-0152-F
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RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.
PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).
RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

b(1) National security classified information [(b)(1) of the FOIA]
b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

Arms Control: Needed More Than Ever

By

John D. Holum

In the post cold war era, arms control must be a centerpiece of our national security. President Clinton knows and is acting on that reality.

The end of the cold war, turbulent changes in the former Soviet Union, and uncertainty in the Korea peninsula are among the most compelling threats to U.S. and world security. As President Clinton warned in his September 1993 speech to the United Nations General Assembly, "One of our most urgent priorities must be attacking the proliferation of weapons of mass destruction, whether they are nuclear, chemical, or biological; and the ballistic missiles that can rain them down on populations hundreds of miles away...If we do not stem the proliferation of the world's deadliest weapons, no democracy can feel secure."

Accordingly, President Clinton has pushed a long standing arms control objective -- nonproliferation -- to the top of the U.S. national security agenda. In his first year, the President:

- Has reversed the past U.S. position against a comprehensive test ban and has laid a solid foundation for negotiations to begin this month in Geneva;

- Has called for a multilateral convention to stop the production of fissile material for weapons;

- Is pushing for an indefinite extension and universal adherence to the NPT;

- Has reaffirmed the traditional interpretation of the ABM Treaty as U.S. policy while rejecting costly and destabilizing space-based systems;

- Is pursuing theater ballistic missile defenses while multilateralizing and clarifying the ABM Treaty;

- Is seeking Russian and Chinese cooperation to control missile technology capabilities; and

- Has submitted the Chemical Weapons Convention to the Senate for treaty ratification in 1994.

This last point underscores a basic principle that will guide my service as President Clinton's chief advisor on arms control matters and Director of a revitalized Arms Control and Disarmament Agency. The U.S. arms control, nonproliferation, and disarmament program must be a national undertaking, not a partisan one.

Thus, President Bush signed the Chemical Weapons Convention on January 13, 1993, and President Clinton submitted it to the Senate for ratification on November 23, 1993. With favorable action by the Congress on the Treaty this spring, Presidents Bush and Clinton will have joined efforts to ban an entire class of weapons of mass destruction.

As opposed to spending scarce resources on new and more dangerous weapons, President Clinton has shifted the focus to the elimination or control of weapons of mass destruction in the hands of potential adversaries. This threat reduction strategy means a more secure America and a safer world, even while we are spending considerably less on defense.

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~~CONFIDENTIAL~~

20075

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

January 21, 1994

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: ROBERT G. BELL RGB

FROM: STEVEN P. ANDREASEN SPA

SUBJECT: Message from the President to the Conference on Disarmament

The attached message from the President to the Conference on Disarmament (CD) would be delivered by ACDA Director Holum to the CD at its opening session on January 25.

RECOMMENDATION

That you approve the attached message from the President to the CD.

Approve______ Disapprove______

Attachment
Tab I Message from the President

DECLASSIFIED
E.O. 13526
White House Guidelines, September 11, 2006
By VL NARA, Date 10/3/2016
2016-0452-F

~~CONFIDENTIAL~~
Declassify on: OADR

MESSAGE FROM THE PRESIDENT TO THE CONFERENCE ON DISARMAMENT

The end of the Cold War, regional instabilities and the growing threat of the proliferation of nuclear weapons have created new and compelling circumstances to make progress in disarmament. Accordingly, I decided last July to extend the moratorium on United States nuclear weapon tests and committed the U.S. to achieving a Comprehensive Test Ban Treaty. At the same time, I called on the other nuclear weapon states to observe a testing moratorium, and do so again today.

The Conference on Disarmament has several important items on its agenda as the 1994 session begins, including transparency in armaments, and it may assume others, such as a ban on fissile material production for nuclear explosives purposes. None is more important than the negotiation of a comprehensive and verifiable ban on nuclear explosions. This objective -- so long sought, so long elusive -- is the Conference's top priority. It reflects our common desire to take decisive action to support and supplement the global nuclear nonproliferation regime, and to constrain further the acquisition and development of nuclear weapons.

Rest assured that with my full authority, Ambassador Ledogar and the U.S. Delegation will join with you in taking bold steps towards a world made safer through the negotiation of a Comprehensive Test Ban Treaty that will strengthen the security of all nations at the earliest possible time.

~~CONFIDENTIAL~~

20075

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

January 21, 1994

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~~CONFIDENTIAL~~
Declassify on: OADR

~~CONFIDENTIAL~~

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~~CONFIDENTIAL~~

20073

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

January 21, 1994

ACTION

MEMORANDUM FOR NANCY SODERBERG

THROUGH: DANIEL PONEMAN

FROM: ELISA D. HARRIS

SUBJECT: Invitation to Speak at the Brookings Institution

I have been invited to speak at the Brookings Institution's American Defense and National Policymaking seminar on January 26. I would discuss U.S. strategy for nonproliferation. The audience will be senior military officers and civilians from DoD and related agencies.

Concurrences by: Bob Bell, Alan Kreczko, Donald Steinberg

RECOMMENDATION

That you approve my acceptance of the invitation at Tab I.

Approve _____ Disapprove _____

Attachment
Tab I Invitation

THE BROOKINGS INSTITUTION

1775 Massachusetts Avenue, N.W. Washington, D.C. 20036-2188
Telephone: 202/797-6000 Fax: 202/797-6004

Center for Public Policy Education

December 2, 1993

Dr. Elisa D. Harris
Director for Nonproliferation and Export Controls
National Security Council
Executive Office of the President
389 Old Executive Office Building
Washington, D.C. 20506

Dear Elisa:

I am writing to invite you to speak to our *American Defense and National Policymaking* seminar to be held in Washington, D.C. the week of January 23-27, 1994.

Specifically, we would like you to meet with the group on Wednesday, January 26, 1994 from 4:00 until 5:00 p.m. to discuss "U.S. Strategy for Nonproliferation." I do hope you will be able to do this. The meeting will be held in Room 203 here at Brookings.

This program is designed for senior military officers and civilian managers in the Department of Defense and DOD-related agencies. During informal, off-the-record sessions, they meet with Members of Congress, Administration officials, and other experts on American government in an intensive look at national policymaking and selected domestic and national security policy issues.

We would like your opening remarks to be about 15-20 minutes and then take questions for the remainder of the time.

I hope you will be able to meet with this group. Should you have questions or need additional information, please contact Carol Delaney of my staff at (202)797-6094.

Sincerely,

Lawrence J. Korb
Director

P.S. I have enclosed the preliminary list of attendees; we expect a total group of approximately 35.

Seminar on Defense and National Policymaking

January 23-27, 1994

Preliminary List of Participants
(As of December 1, 1993)

Herbert K. Anderson, Jr.
Chief, Customer Interaction Division
National Aerospace & Intelligence Center
U.S. Department of the Air Force
NAIC/TAI 4115 Hebble Creek Road
Suite 27
Wright-Patterson AFB, OH 45433

Commander D. Scott Bianchi
Civil Engineer Corps
Naval Air Warfare Center
Aircraft Division Warminster
P.O. Box 5152 Code 83
Warminster, PA 18974-0591

Robert P. Bongiovi
Program Director, Aircraft System Program Office
ASC/SD
U.S. Department of the Air Force
2275 D Street
Suite 16
Wright-Patterson AFB, OH 45433

Carl A. Conley
Chief, Human Resources Development Division
Financial Management and Controller Directorate
U.S. Department of the Air Force
ASC/FMP, Building 11A
1970 Third Street, Suite 6
Wright-Patterson AFB, OH 45433

Jeffrey W. Crews
Director, Operational Support Division
U.S. Department of the Navy
Chief of Naval Operations
CNO (N23)
Washington, D.C. 20350-2000

James A. Cunningham
Program Director for Lantirn System Program Office
U.S. Department of the Air Force
ASC/VL Bldg. 2042, 2609 L St.
Wright-Patterson AFB, Ohio 45433-7500

Charles R. Gentzel
Deputy, Surface-to-Air Defense
Office of the Under Secretary of Defense
U.S. Department of Defense
OUSD (A)/S&SS/DS
Room 3D136, the Pentagon
Washington, D.C. 20301-3090

Lt. Col. David P. Heidenthal
Headquarters, U.S. Marine Corps
Code: RAP
2 Navy Annex
Washington, D.C. 20380-1775

Homer T. Hodge
Chief, MilCap Branch
Army Intelligence and Threat Analysis Center
U.S. Department of the Army
Building 213, WNY
Washington, D.C. 20374-5085

Colonel Michael E. Koch
Chief of Staff
Defense Commissary Agency HQ
38th Street and E Avenue
Bldg. 11200
Fort Lee, Virginia 23801-6300

James F. Lewkowicz
Supervisory Geophysicist
U.S. Department of the Air Force
Phillips Laboratory/GPEH
29 Randolph Road
Hanscom AFB, MA 01731

David N. Lopez
Chief, N/S America Branch
Western Hemisphere Division
U.S. Department of Defense
Joint Staff, J-5
Washington, D.C. 20318-5134

Frank S. McKetta
Program Auditor
Naval Audit Service Headquarters
5611 Columbia Pike
Falls Church, VA 22041-5080

Richard W. Russell
Director, Warfare Systems Program
Naval Undersea Warfare Center Division
Code 019, Building 1258
Newport, Rhode Island 02841

Oscar D. Scarborough
Deputy Director, U.S. Nuclear Command and Control System Support Staff
U.S. Department of Defense
Office of the Secretary
Room 3E209, the Pentagon
Washington, D.C. 20301-3040

Charles F. Smith, Jr.
Division Chief, Test, Deployment and Training Systems, C-17 SPO
ASC/YCT
U.S. Department of the Air Force
2600 Paramount Place
Fairborn, Ohio 45324-6766

Lt. Colonel George J. Trautman
U.S. Marine Corps
Federal Executive Fellow
The Brookings Institution
1775 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Colonel Howard J. Withycombe
Director, Mission Operations
Ballistic Missile Defense Organization
U.S. Department of Defense
7100 Defense, the Pentagon
Washington, D.C. 20301-7100

UNCLASSIFIED
NSC/RMO PROFILE

RECORD ID: 9420073
RECEIVED: 21 JAN 94 12

TO: SODERBERG

FROM: HARRIS
PONEMAN

DOC DATE: 21 JAN 94
SOURCE REF:

KEYWORDS: NON PROLIFERATION PUBLIC STATEMENTS

PERSONS: HARRIS

SUBJECT: INVITATION FOR HARRIS TO SPEAK AT BROOKINGS INST AMER DEFENSE & NATL POLICYMAKING SEMINAR ON 26 JAN

ACTION: SODERBERG APPROVED RECOM DUE DATE: 25 JAN 94 STATUS: C

STAFF OFFICER: HARRIS LOGREF:

FILES: ADMIN NSCP: CODES:

D O C U M E N T D I S T R I B U T I O N

FOR ACTION	FOR CONCURRENCE	FOR INFO
		BELL
		HARRIS
		KRECZKO
		MANZANARES
		NSC CHRON
		PONEMAN
		STEINBERG

COMMENTS: ______

DISPATCHED BY ______ DATE ______ BY HAND W/ATTCH

OPENED BY: NSJEB CLOSED BY: NSKDB DOC 1 OF 1

UNCLASSIFIED

20073

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

January 21, 1994

ACTION

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TELEPHONE: 202/797-6000 FAX: 202/797-6004

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U.S. Department of Defense
7100 Defense, the Pentagon
Washington, D.C. 20301-7100

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

January 24, 1994

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: ROBERT BELL RGB

FROM: PETER FEAVER PDF

SUBJECT: Letter to President from Senator Lieberman Re. Sale of M1A2 Tanks to Sweden

Per Executive Secretary's instructions, this packet has been redone to reflect Sweden's recent decision to award the contract to Germany.

Tab B of Tab I is a letter from Senator Lieberman to the President asking the President to do all he can to advance the sale of M1A2 tanks to Sweden. Tab A of Tab I is a proposed response letter for the President's signature. Tab I is a memorandum from you to the President covering the correspondence.

Concurrences by: Charles Kupchan and Jeremy Rosner

RECOMMENDATION

That you sign and forward the memorandum at Tab I to the President.

Attachments
Tab I Memorandum to the President
 Tab A Letter to Senator Lieberman
 Tab B Incoming Correspondence

THE WHITE HOUSE

WASHINGTON

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE
SUSAN BROPHY

SUBJECT: Letter from Senator Lieberman Re. Sale of M1A2 Tanks to Sweden

Purpose

To respond to a letter from Senator Lieberman asking the Administration to do all that it can to advance the sale of M1A2 tanks to Sweden.

Background

Sweden has decided to upgrade its armored forces with a major purchase of main battle tanks. In an earlier memorandum, we informed you that the Swedish government had narrowed the competition to the American M1A2 and the German Leopard tanks. Senator Lieberman, citing the job implications of the sale, urged you to do everything you can to persuade the Swedish government to purchase the American tank. He also thanked you for bringing this matter up with the Swedish Prime Minister during his visit to the White House.

Despite extensive efforts by your Administration, Sweden decided to purchase the German tanks. Your new proposed response to Senator Lieberman expresses your disappointment in the Swedish decision and reassures him that your Administration did everything it could to close the deal successfully.

RECOMMENDATION

That you sign the letter to Senator Lieberman at Tab A.

Attachments
Tab A Letter to Senator Lieberman
Tab B Incoming Correspondence

cc: Vice President
Chief of Staff

THE WHITE HOUSE

WASHINGTON

Dear Joe:

Thank you for writing about the sale of M1A2 tanks to Sweden.

As you know, my Administration strongly supported this sale and I personally spoke with the Swedish Prime Minister about it. Further, Secretary Aspin and Deputy Secretary Perry were directly involved in negotiations with the Swedish government.

Despite our concerted efforts, the Swedish government decided not to purchase the tanks from the United States. I share your disappointment that our efforts were not successful.

Sincerely,

The Honorable Joseph Lieberman
United States Senate
Washington, D.C. 20510

JOSEPH I. LIEBERMAN
CONNECTICUT

COMMITTEES:
ARMED SERVICES
ENVIRONMENT AND PUBLIC WORKS
GOVERNMENTAL AFFAIRS
SMALL BUSINESS

10100

United States Senate

WASHINGTON, DC 20510-0703

SENATE OFFICE BUILDING
WASHINGTON, DC 205
(202) 224-4041

STATE OFFICE:
ONE COMMERCIAL PLAZA
21ST FL
HARTFORD, CT 06103
203-240-3566
TOLL FREE: 1-800-225-

December 22, 1993

93 DEC 27 P3:10

President William J. Clinton
The White House
Washington, D. C. 20500

Dear Mr. President:

On November 19th I joined twenty-five of my colleagues in writing you to ask for your personal involvement, and that of key members of your Administration, with the government of Sweden. As you know, Sweden is on the verge of selecting a new main battle tank for its Army and the U.S. M1A2 tank is one of the principal competitors.

I have been told that you spoke to the Swedish Prime Minister about the competition during his visit to the White House and Deputy Secretary of Defense Perry raised the issue during his recent visit to Sweden. Further, I have seen press reports that Secretary of Defense Aspin has written his counterpart in Stockholm about the competition. I greatly appreciate your personal involvement and your efforts to have the Defense Department become actively involved. In light of the political efforts being mounted by our European competitors and the thousands of jobs at stake in the U.S., these were critical efforts. Reportedly, the ongoing discussions between the U.S. bidder and the Ministry of Defense have been serious and constructive. My understanding is that the Prime Minister is expected to make the final decision some time in January.

I believe it would be helpful if the Administration would continue to be engaged with the Swedish government on this issue since we can be sure that French and German officials are in frequent contact with their Swedish counterparts. The focus of the issue will shift at the beginning of the year from the Ministry of Defense to the Prime Minister's office. As we approach the point where the political decision will be made in early January, your support for this superb tank and American industry, reiterated to the Swedish Prime Minister at the proper time, can only be helpful.

Again, thank you for your interest and help. Because of your continued support, the M1A2 sale can be a victory for your proposed national export strategy and a signal that your Administration, unlike its predecessors, plans to take export promotion very seriously.

Sincerely,

warm personal
[illegible]

Joseph I. Lieberman

THE WHITE HOUSE

WASHINGTON

December 27, 1993

MEMORANDUM FOR WILLIAM ITOH

FROM: SUSAN BROPHY SB
LEGISLATIVE AFFAIRS

SUBJECT: CONGRESSIONAL MAIL

Attached are copies of letters sent to the President from several members of Congress.

Since these letters address national security issues, I would appreciate your assistance in drafting a response. The letters are as follows:

1) Barney Frank and others (D-MA), concerning defense spending;

2) Joe Lieberman (D-CT), concerning sale of M1A2 tanks to Sweden; and

3) Elizabeth Furse (D-OR), concerning nuclear weapons.

Thank you very much for your assistance. If you have any questions, please feel free to call LeeAnn Inadomi at x7500.

Enclosure

THE PRESIDENT HAS SEEN 1/20
10100

THE WHITE HOUSE

WASHINGTON

January 13, 1994 94 JAN 13 P7:44

ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE
SUSAN BROPHY SB

SUBJECT: Letter from Senator Lieberman Re. Sale of M1A2 Tanks to Sweden

Purpose

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The Swedish purchase of a main battle tank is tied to their plan also to purchase 200 used tanks. Over the Christmas holidays, Deputy Secretary of Defense William Perry wrote his Swedish counterpart with a new lower price on used M1A1 tanks in an effort to sweeten the deal. Your proposed response to Senator Lieberman expresses your strong support for the sale and informs him that your Administration is doing everything it can to close the deal successfully.

RECOMMENDATION

That you sign the letter to Senator Lieberman at Tab A.

Attachments
Tab A Letter to Senator Lieberman
Tab B Incoming Correspondence

cc: Vice President
Chief of Staff

THE WHITE HOUSE

WASHINGTON

Dear Joe:

Thank you for writing about the sale of M1A2 tanks to Sweden.

As you know, my Administration strongly supports this sale and I have personally spoken with the Swedish Prime Minister about it. Further, Secretary Aspin and Deputy Secretary Perry have been directly involved in negotiations with the Swedish government.

We are aggressively pursuing this sale. I share your hope that our efforts will be successful.

Sincerely,

Bill

The Honorable Joseph Lieberman
United States Senate
Washington, D.C. 20510

National Security Council
The White House

PROOFED BY: ________ LOG # 10100

URGENT NOT PROOFED: ________ SYSTEM PRS NSC INT

BYPASSED WW DESK: ________ DOCLOG ________ A/O ________

	SEQUENCE TO	HAS SEEN	DISPOSITION
DepExecSec	1		Review
ExecSec			
Staff Director			
D/APNSA			
APNSA			
Situation Room			
West Wing Desk	2		
NSC Secretariat			
	3		

A = Action I = Information D = Dispatch R = Retain N = No Further Action

cc: VP McLarty Other ________

Should be seen by: ________
(Date/Time)

COMMENTS: Date?

DISPATCH INSTRUCTIONS:

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

January 20, 1994

ACTION

MEMORANDUM FOR WILLIAM H. ITOH

THROUGH: ROBERT BELL

FROM: KEITH HAHN

SUBJECT: Transportation Draft Bill Coast Guard Law Enforcement Enhancement Act of 1994

Attached at Tab II is the Department of Transportation's draft legislation designed to augment and clarify the Coast Guard's authority and to incorporate exceptions from the Federal Tort Claims Act and the Public Vessels Act. The legislation consists of two titles. Title I strengthens the Coast Guard's ability to interdict vessels and aircraft attempting to smuggle illegal migrants or drugs into the country by granting Federal law enforcement officers the authority to order aircraft to land and vessels to bring to. Civil and criminal sanctions are provided for failure to comply with such orders and for obstructions of boardings or providing false information.

Under current law, the Coast Guard has no express authority to enforce most drug laws against aircraft. The authority granted in this title will enable Federal law enforcement officers to interdict aircraft subject to the jurisdiction of the U.S. beyond our borders. The title also provides an effective sanction to compel a vessel to comply with a lawful order to "bring to." In addition, it compels persons onboard vessels to provide truthful information about the vessel's destination, origin, ownership, registration, nationality, cargo and crew. Such information is essential to facilitate the boarding of vessels and the prosecution of smugglers.

Title II authorizes the Coast Guard to engage in law enforcement, when necessary, to render aid to persons and property imperiled by natural disasters or other emergencies. Under current law, the Coast Guard is limited to taking charge of and protecting all property saved from "maritime or aircraft disasters, or floods." The title also includes a provision allowing the Commandant to indemnify Coast Guard members and employees who are sued for acts committed within the scope of their official duties.

During discussions at the Major Maritime Powers Conference in London in November there was some concerned voiced by the British and the Germans about Coast Guard "lawful search" practices outlined in title I. U.S. Coast Guard participants were reluctant to engage in discussions about the extent to which these practices comply with U.S. positions on Freedom of Navigation and applicable portions of the Law of the Sea Conference. In this regard, we should defer to State Department experts on maritime law.

Concurrences by: Alan Kreczko and Jeremy Rosner

RECOMMENDATION

That you sign the memorandum at Tab I concurring in the draft Transportation bill, with the exception of those sections of title I dealing with lawful search, in which case we defer to the Department of State.

Attachments
Tab I Memorandum for Signature
Tab II Incoming Correspondence

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

MEMORANDUM FOR JAMES J. JUKES

FROM: WILLIAM H. ITOH

SUBJECT: Transportation Draft Bill Coast Guard Law Enforcement Enhancement Act of 1994

The National Security Council staff concurs in the draft Transportation bill with the exception of those sections of title I dealing with lawful search, in which case we defer to the Department of State.

0394

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503

January 14, 1994

LEGISLATIVE REFERRAL MEMORANDUM

LRM #D-531
DRAFT #449

TO: Legislative Liaison Officer -

JUSTICE - Sheila F. Anthony - (202)514-2141 - 217
TREASURY - Richard S. Carro - (202)622-1146 - 228
ONDCP - Ray Brownfield - (202)395-6736 - 257
DEFENSE - Samuel T. Brick, Jr. - (703)697-1305 - 325
STATE - Julia C. Norton - (202)647-4463 - 225
NSC - William H. Itoh - (202)395-3723 - 249
INTERIOR - Danny Consenstein - (202)208-6706 - 329
COMMERCE - Mike Levitt - 482-3086 - 324

FROM: JAMES J. JUKES (for) Jim
Assistant Director for Legislative Reference

OMB CONTACT: Douglas STEIGER (395-3386)
Secretary's line (for simple responses): 395-3454

SUBJECT: TRANSPORTATION Draft Bill Coast Guard Law Enforcement Enhancement Act of 1994

DEADLINE: January 31, 1994

OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

Please advise us if this item will affect direct spending or receipts for purposes of the the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

CC:
C. Walden/J. Cerda
Roger Adkins
Chris Bertram
Harry Meyers
Jim Duke
Mark Schwartz
Jim Fish
Jeff Ashford
Chris Brown
Art Stigile

RESPONSE TO LEGISLATIVE REFERRAL MEMORANDUM

If your response to this request for views is **simple** (e.g., concur/no comment) we prefer that you respond by **faxing** us this response sheet. If the response is **simple** and you prefer to call, please **call the branch-wide line** shown below (NOT the analyst's line) to leave a message with a secretary.

You may **also respond** by (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); (2) sending us a memo or letter; or (3) if you are an OASIS user in the Executive Office of the President, sending an E-mail message. Please **include** the LRM number shown above, and the **subject** shown below.

TO: Douglas STEIGER
Office of Management and Budget
Fax Number: (202) 395-3109
Analyst/Attorney's Direct Number: (202) 395-3386
Branch-Wide Line (to reach secretary): (202) 395-3454

FROM: ______________________ (Date)

______________________ (Name)

______________________ (Agency)

______________________ (Telephone)

SUBJECT: TRANSPORTATION Draft Bill Coast Guard Law Enforcement Enhancement Act of 1994

The following is the response of our agency to your request for views on the above-captioned subject:

_______ Concur

_______ No objection

_______ No comment

_______ See proposed edits on pages ______________

_______ Other: ______________________

_______ FAX RETURN of _____ pages, attached to this response sheet

January 7, 1994

The Honorable Leon E. Panetta
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Panetta:

This letter transmits proposed legislation

> "To augment and clarify law enforcement agency authority and to incorporate long-standing exceptions from the Federal Tort Claims Act into the Suits in Admiralty Act and the Public Vessels Act."

This legislative proposal, entitled the "Coast Guard Law Enforcement Enhancement Act of 1994," consists of two titles. Title I is composed of six sections that grant Federal law enforcement officers the authority to order aircraft to land and vessels to bring to. Civil and criminal sanctions are provided for failure to comply with such orders and for obstructions of boardings or providing false information. With the exception of the provisions imposing sanctions on persons aboard vessels who impede boardings or provide false information, these provisions were included as the "Order To Land and To Bring to Act of 1991," a title of S. 1575. This bill was introduced during the 102nd Congress at the request of the Office of National Drug Control Policy (ONDCP).

Title II of this proposal consists of three sections. Section 201 authorizes the Coast Guard to engage in law enforcement, when necessary, to render aid to persons and property imperiled by disasters or other emergencies. Section 202 allows the Commandant to indemnify Coast Guard members and employees who are sued for acts committed within the scope of their official duties while they are carrying out law enforcement activities. Section 203 incorporates long-standing exceptions from the waiver of sovereign immunity of the Federal Tort Claims Act into the Suits in Admiralty Act and the Public Vessels Act. An additional exception is provided in this section for claims arising out of acts committed by Federal employees administering the International Emergency Economic Powers Act.

Under present law, the Coast Guard has no express authority to enforce most drug laws against aircraft. Generally, the Customs Service has law enforcement authority only to the border of the United States. Currently, drug trafficking aircraft carry a significant portion of the drugs ultimately entering the United States, and under present law most escape uncaptured. The aviation interdiction provisions of title I are needed to facilitate the interdiction of drug smugglers who use foreign registered or stateless aircraft that depart from South America, airdrop or land their contraband in a Central American transit country or the high seas, and return to South America without crossing the border of the United

States. Section 101 will extend the authority of authorized Federal law enforcement officers to interdict aircraft subject to the jurisdiction of the United States beyond the border of the United States.

Section 101 also provides an effective sanction to compel a vessel to comply with a lawful order to bring to. Fleeing vessels have time to jettison contraband, destroy evidence, or may act as decoys to divert Coast Guard assets away from other vessels carrying contraband. As a result, Coast Guard assets are diverted from their search and rescue and other missions, and drug smugglers may be provided with an opportunity to hinder or avoid prosecution. This section would provide an effective deterrent to drug smugglers utilizing such tactics.

In addition, section 101 provides a sanction that will allow Federal law enforcement officers conducting vessel boardings to effectively curtail non-forcible obstructions of boardings. While forcibly obstructing a Federal law enforcement officer is a crime (18 U.S.C. 111, 113), no statute provides penalties, criminal or civil, for non-forcible acts of obstruction during boardings. The ability to impose such penalties would serve as a deterrent to non-physical obstructions of boardings. This would help prevent confrontational situations from escalating into physical assaults on Federal law enforcement officers. Finally, this section provides sanctions to facilitate boardings by compelling persons on board vessels to provide truthful information regarding a vessel's destination, origin, ownership, registration, nationality, cargo, or crew. Such information is essential to facilitate the boarding of vessels and the prosecution of drug smugglers.

Section 102 of this proposal amends section 501(e) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1401(e)) by requiring the immediate revocation of the registration of an aircraft whose pilot, operator, or person in charge has failed to follow the order of a Federal law enforcement officer to land as provided in section 101 of this proposal. This section also amends section 609 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1429) by requiring the revocation of the airman certificate of a pilot, operator, or person in charge if it is determined that he knew or had reason to know that such an order was issued. These sanctions are needed to augment the sanctions provided by section 101 in order to compel drug smuggling aircraft to land, and to deter airborne drug smuggling.

Section 103 of this proposal amends title 14, United States Code, by adding a new section 96. This section grants the Coast Guard the authority to issue orders, make inquiries, searches, seizures, and arrests for violations of United States law occurring aboard any aircraft subject to the jurisdiction of the United States. This grants the Coast Guard express law enforcement authority over aircraft. This authority expressly authorizes the Coast Guard to enforce the provisions of this Act as well as Section 590 of the Tariff Act of 1930 (19 U.S.C. 1590), as amended.

Section 104 of this proposal amends title 14, United States Code, by adding a new section 673. This section imposes a civil penalty of $15,000 upon the master/pilot, operator, or person in charge of a vessel or aircraft who fails to comply with an order of a Coast Guard commissioned officer, warrant officer, or petty officer issued under the authority of this section or section 101 of this proposal. A civil penalty of $25,000 is imposed for intentional violations. These civil penalties are necessary in order to provide a civil sanction for noncompliance with the provisions of this Act. Such a sanction provides a greater general deterrence than criminal penalties alone by increasing the range of sanctions that may be imposed.

Section 105 adds a new subsection (i) to section 581 of the Tariff Act of 1930 (19 U.S.C. 1581) that defines "authorized place" as that term is used in section 581. This amendment clarifies the law enforcement authority of customs officers in foreign countries. Section 106 creates a new section in part V of title IV of the Tariff Act of 1930 that provides for customs civil penalties for willful, grossly negligent, and negligent failure to comply with an order to land. The maximum amounts that may be imposed are the same as those of section 104.

Title II, section 201 of this proposal amends section 88 of title 14, United States Code, by expressly granting the Coast Guard law enforcement authority ashore to render aid to persons and property imperiled by disasters or other emergencies. Section 88 of title 14, United States Code, now authorizes the Coast Guard to perform all acts necessary to render aid to persons and property imperiled by flood. Express statutory authority is required for the Coast Guard to engage in law enforcement activities ashore during disasters or other emergencies.

Section 202 of this proposal amends title 14, United States Code, by adding a new section 674. This section allows the Commandant to indemnify Coast Guard members and employees for acts committed within the scope of their official duties while carrying out law enforcement activities. Various other Federal law enforcement officers are currently indemnified under other provisions of law. Coast Guard personnel should have this same protection to enable them to properly carry out their law enforcement duties without fear of personal liability.

Section 203 of this proposal specifically incorporates nine exceptions from the waiver of sovereign immunity of the Federal Tort Claims Act into the Suits in Admiralty Act (46 U.S.C. App. 741-752), and the Public Vessels Act (46 U.S.C. App. 781-790). In addition, the proposed amendment to section 742 paragraph (5) incorporates an exception for claims arising under the International Emergency Economic Powers Act (50 U.S.C. 1701-1706). This section resolves inconsistent court decisions concerning whether Federal Tort Claims exceptions are implicitly incorporated in the Suits in Admiralty Act and the Public Vessels Act. The Coast Guard is especially concerned with the discretionary function and customs detention exceptions as they apply to the boarding and search of vessels. If a court holds that sovereign immunity is waived, and these exceptions do not apply to vessels at sea, then the Government is liable for property damage resulting from a law enforcement action. The incongruous result under current law is that the United States cannot be held liable for damage to private property resulting from customs seizures ashore, but can be found liable for the same conduct occurring on navigable waters.

Your advice is requested

~~The Office of Management and Budget has advised that there is no objection, from the standpoint of the Administration's program, to the submission of this proposed legislation to Congress.~~

~~I recommend that the proposed legislation be enacted by Congress.~~

Sincerely,

Stephen H. Kaplan

3 Enclosures
  Draft Bill
  Comparative Type
  Statement of Need/Sec-by-Sec Analysis

A BILL

"To augment and clarify law enforcement agency authority and to incorporate long-standing exceptions from the Federal Tort Claims Act into the Suits in Admiralty Act and the Public Vessels Act."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Coast Guard Law Enforcement Enhancement Act of 1994".

TITLE I -- INTERDICTION SYSTEMS IMPROVEMENTS

SEC. 101. SANCTIONS FOR FAILURE TO LAND OR TO BRING TO; SANCTIONS FOR OBSTRUCTION OF BOARDING AND PROVIDING FALSE INFORMATION.

(a) IN GENERAL. -- Chapter 109 of title 18 of the United States Code, is amended by adding at the end the following new section:

"Sec. 2237. Sanctions for failure to land or to bring to; sanctions for obstruction of boarding and providing false information.

"(a)(1) It shall be unlawful for the pilot, operator, or person in charge of an aircraft which has crossed the border of the United States, or an aircraft subject to the jurisdiction of the United States operating outside the United States, to fail to obey an order to land by an authorized Federal law enforcement officer who is enforcing the laws of the United States relating to controlled substances, as that term is defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), or relating to money laundering (sections 1956-57 of this title).

"(2) The Administrator of the Federal Aviation Administration, in consultation with the Commissioner of Customs and the Attorney General, shall prescribe regulations governing the means by which a Federal law enforcement officer may communicate an order to land to a pilot, operator, or person in charge of an aircraft.

"(b)(1) It shall be unlawful for the master, operator, or person in charge of a vessel of the United States or a vessel subject to the jurisdiction of the United States, to fail to obey an order to bring to that vessel on being ordered to do so by an authorized Federal law enforcement officer.

"(2) It shall be unlawful for any person on board a vessel of the United States or a vessel subject to the jurisdiction of the United States to--

"(A) fail to comply with an order of an authorized Federal law enforcement officer in connection with the boarding of the vessel;

"(B) impede or obstruct a boarding or arrest, or other law enforcement action authorized by any Federal law; or

"(C) provide information to a Federal law enforcement officer during a boarding of a vessel regarding the vessel's destination, origin, ownership, registration, nationality, cargo, or crew, which that person knows or has reason to know is false.

"(c) This section does not limit in any way the preexisting authority of a customs officer under section 581 of the Tariff Act of 1930 or any other provision of law enforced or administered by the Customs Service, or the preexisting authority of any Federal law enforcement officer under any law of the United States to order an aircraft to land or a vessel to bring to.

"(d) A foreign nation may consent or waive objection to the enforcement of United States law by the United States under this section by radio, telephone, or similar oral or electronic means. Consent or waiver may be proven by certification of the Secretary of State or the Secretary's designee.

"(e) For purposes of this section--

"(1) A 'vessel of the United States', and a 'vessel subject to the jurisdiction of the United States' have the meaning set forth for these terms in the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.);

"(2) an aircraft 'subject to the jurisdiction of the United States' includes--

"(A) an aircraft located over the United States or the customs waters of the United States;

"(B) an aircraft located in the airspace of a foreign nation, where that nation consents to the enforcement of United States law by the United States; and

"(C) over the high seas, an aircraft without nationality, an aircraft of United States registry, or an aircraft registered in a foreign nation that has consented or waived objection to the enforcement of United States law by the United States;

"(3) an aircraft 'without nationality' includes--

"(A) an aircraft aboard which the pilot, operator, or person in charge makes a claim of registry, which claim is denied by the nation whose registry is claimed; and

"(B) an aircraft aboard which the pilot, operator, or person in charge fails, upon request of an officer of the United States empowered to enforce applicable provisions of United States law, to make a claim of registry for that aircraft.

"(4) the term 'bring to' means to cause a vessel to slow or come to a stop to facilitate a law enforcement boarding by adjusting the course and speed of the vessel to account for the weather conditions and sea state; and

"(5) the term 'Federal law enforcement officer' has the meaning set forth in section 115 of this title.

"(f) Any person who intentionally violates the provisions of this section shall be subject to--

"(1) imprisonment for not more than five years; and

"(2) a fine as provided in this title.

"(g) An aircraft or vessel that is used in violation of this section may be seized and forfeited. The laws relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims, shall apply to seizures and forfeitures undertaken, or alleged to have been undertaken, under any of the provisions of this section; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose. A vessel or aircraft that is used in violation of this section is also liable in rem for any fine or civil penalty imposed under this section.".

(b) CLERICAL AMENDMENT. -- The analysis at the beginning of chapter 109 of title 18, United States Code, is amended by inserting the following new item after the item for section 2236:

"2237. Sanctions for failure to land or to bring to; sanctions for obstruction of boarding or providing false information.".

SEC. 102. FAA SUMMARY REVOCATION AUTHORITY.

(a) Section 501(e) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1401(e)) is amended by adding at the end the following new paragraph:

"(3)(A) The registration of an aircraft shall be immediately revoked upon the failure of the pilot, operator, or person in charge of the aircraft to follow the order of a Federal law enforcement officer to land an aircraft, as provided in section 2237 of title 18, United States Code. The Administrator shall as soon as possible notify the owner of the aircraft that the owner no longer holds United States registration for that aircraft.

"(B) The Administrator shall establish procedures for the owner of the aircraft to show cause--

"(i) why the registration was not revoked, as a matter of law, by operation of subparagraph (A); or

"(ii) why circumstances existed pursuant to which the Administrator should determine that, notwithstanding subparagraph (A), it would be in the public interest to issue a new certificate of registration to the owner to be effective concurrent with the revocation occasioned by operation of subparagraph (A).".

(b) Section 609 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1429) is amended by adding at the end the following new subsection (d):

"(d)(1) The Administrator shall issue an order revoking the airman certificate of any person if the Administrator finds that:

(A) such person, while acting as the pilot, operator, or person in charge of an aircraft failed to follow the order of a Federal law enforcement officer to land the aircraft as provided in section 2237 of title 18, United States Code, and

(B) that such person knew or had reason to know that he had been ordered to land the aircraft.

"(2) If the Administrator determines that extenuating circumstances existed, such as safety of flight, which justified a deviation by the airman from the order to land, the provisions of paragraph (1) of this subsection shall not apply.

"(3) The provisions of subsection (c)(3) of this section shall apply to any revocation of the airman certificate of any person for failing to follow the order of a Federal law enforcement officer to land an aircraft.".

SEC. 103. COAST GUARD AIR INTERDICTION AUTHORITY.

(a) IN GENERAL. -- Chapter 5 of title 14, United States Code, is amended by adding at the end the following new section:

"Sec. 96. Air interdiction authority.

"The Coast Guard may issue orders and make inquiries, searches, seizures, and arrests with respect to violations of laws of the United States occurring aboard any aircraft subject to the jurisdiction of the United States as defined in section 2237 of title 18, United States Code. Any order issued under this section to land an aircraft shall be communicated pursuant to regulations promulgated pursuant to section 2237 of title 18, United States Code.".

(b) CLERICAL AMENDMENT. -- The analysis at the beginning of chapter 5 of title 14, United States Code, is amended by adding at the end the following new item:

"96. Air interdiction authority.".

SEC. 104. COAST GUARD CIVIL PENALTY PROVISIONS.

(a) IN GENERAL. -- Chapter 17 of title 14, United States Code, is amended by adding at the end the following new section:

"Sec. 673. Civil penalty for failure to comply with a lawful boarding, order to land, obstruction of boarding, or providing false information.

"(a) The master, operator, or person in charge of a vessel, or the pilot, operator, or person in charge of an aircraft who fails to comply with an order of a Coast Guard commissioned officer, warrant officer, or petty officer relating to the boarding of a vessel or landing of an aircraft issued under the authority of section 2237 of title 18, United States Code, or section 96 of this title, and communicated according to regulations promulgated under section 2237 of title 18, United States Code, or according to any applicable, internationally recognized standards, or in any other manner reasonably calculated to be received and understood, is liable to the United States Government for a civil penalty of not more than $15,000, which the Secretary may assess after notice and opportunity to be heard. Such hearing shall not be subject to section 554 or section 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence. For intentional violations of this section, a civil penalty of not more than $25,000 shall be assessed.

"(b) A vessel or aircraft used to violate an order relating to the boarding of a vessel or the landing of an aircraft issued under the authority of section 2237 of title 18, United States Code, or section 96 of this title, is also liable in rem for the civil penalty assessed under this section.".

(b) CLERICAL AMENDMENT. -- The analysis at the beginning of chapter 17 of title 14, United States Code, is amended by adding at the end the following new item:

"673. Civil penalty for failure to comply with a lawful
boarding, order to land, obstruction of boarding,
or providing false information.".

SEC. 105. CUSTOMS ORDERS.

Section 581 of the Tariff Act of 1930 (19 U.S.C. 1581) is amended by adding at the end the following new subsection:

"(i) As used in this section, the term 'authorized place' includes--

"(1) with respect to a vehicle, a location in a foreign country at which United States customs officers are permitted to conduct inspections, examinations, or searches; and

"(2) with respect to aircraft to which this section applies by virtue of section 644 of this Act (19 U.S.C. 1644), or regulations issued thereunder, or section 2237 of title 18, United States Code, any location outside of the United States, including a foreign country at which United States customs officers are permitted to conduct inspections, examinations, or searches.".

SEC. 106. CUSTOMS CIVIL PENALTY PROVISIONS.

Part V of title IV of the Tariff Act of 1930 (19 U.S.C. 1581 et seq.) is amended by adding a new section 591 (19 U.S.C. 1591) as follows:

"Sec. 591. Civil penalty for failure to obey an order to land.

"(a) The pilot, operator, or person in charge of an aircraft who fails to comply with an order of an authorized Federal law enforcement officer relating to the landing of an aircraft issued under the authority of section 581 of this Act, or section 2237 of title 18, United States Code, and communicated according to regulations promulgated under section 2237 of title 18, United States Code, or according to any applicable, internationally recognized standards, or in any other manner reasonably calculated to be received and understood, is liable to the United States Government for a civil penalty of not more than $15,000, which the Customs Service may assess after notice and opportunity to be heard. Such hearing shall not be subject to section 554 or section 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence. For intentional violations of this section, a civil penalty of not more than $25,000 shall be assessed.

"(b) An aircraft used to violate an order relating to the landing of an aircraft issued under the authority of section 581 of this Act, or section 2237 of title 18, United States Code, is also liable in rem for the civil penalty assessed under this section.".

TITLE II -- OTHER LAW ENFORCEMENT SYSTEMS IMPROVEMENTS

SEC. 201. COAST GUARD LAW ENFORCEMENT AUTHORITY DURING DISASTERS OR OTHER EMERGENCIES.

Section 88 of title 14, United States Code, is amended as follows:

(1) Subsection (a) is amended by striking "flood" and substituting "disasters or other emergencies".

(2) Paragraph (1) of subsection (a) is amended by inserting ",including law enforcement," immediately before "necessary".

(3) Paragraph (2) of subsection (a) is amended by striking "from marine or aircraft disasters, or floods at which the Coast Guard is present".

(4) Paragraph (1) of subsection (b) is amended by inserting "perform any and all acts, including law enforcement, necessary to" immediately before "render".

SEC. 202. INDEMNIFICATION OF COAST GUARD MEMBERS AND EMPLOYEES.

(a) IN GENERAL. -- Chapter 5 of title 14, United States Code, is amended by adding at the end the following new section:

"Sec. 674. Indemnification of Coast Guard members and employees.

"The Commandant may indemnify any member or employee of the Coast Guard against any claim or judgment against the member or employee if the claim or judgment arises out of an act committed, as determined by the

Commandant, within the scope of the official duties of the member or employee in carrying out law enforcement activities. The Commandant may issue such regulations as may be necessary to implement this section.".

(b) CLERICAL AMENDMENT. – The analysis at the beginning of chapter 5 of title 14, United States Code, is amended by adding at the end the following new item:

"674. Indemnification of Coast Guard members and employees.".

SEC. 203. AMENDMENTS TO SUITS IN ADMIRALTY AND PUBLIC VESSELS ACT.

(a) Amendment to Suits in Admiralty Act. – Section 2 of the Act of March 9, 1920 (46 U.S.C. App. 742; commonly known as the Suits in Admiralty Act) is amended as follows:

(1) The first sentence is amended by striking "In cases" and substituting "(a) Subject to subsection (b), in cases".

(2) The following new subsection (b) is added at the end:

"(b) No proceeding may be brought under this section against the United States, and no proceeding may be brought under any law against an employee of the United States, for an act or omission of the employee while acting in the scope of employment, with respect to the following claims:

"(1) Any claim based on an act or omission of an employee of the United States Government exercising due care in executing a statute or regulation, whether or not the statute or regulation is valid.

"(2) Any claim based on the exercise or performance, or a failure to exercise or perform, a discretionary function or duty by a Federal agency or an employee of the United States Government, whether or not involving an abuse of discretion by the agency or employee.

"(3) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.

"(4) Any claim arising out of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or by any other Federal law enforcement officer.

"(5) Any claim arising out of an act or omission of any employee of the United States in administering the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.) or the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

"(6) Any claim for damages arising out of the imposition or establishment of a quarantine by the United States.

"(7) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights. With regard to acts or omissions of Federal law enforcement officers, this Act shall apply to any claim arising on or after the date of the enactment of this subsection out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution.

"(8) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system.

"(9) Any claim arising out of the combatant activities of the military or naval forces (including the Coast Guard) during time of war.

"(c) In this section, the term 'Federal law enforcement officer' has the meaning set forth in section 115 of title 18, United States Code.".

(b) Amendment to Public Vessels Act. -- Section 1 of the Act of March 3, 1925 (46 U.S.C. App. 781; commonly known as the Public Vessels Act) is amended as follows:

(1) The first sentence is amended by striking "A libel" and substituting "(a) Subject to subsection (b), a libel".

(2) The following new subsection (b) is added at the end:

"(b) No libel or petition may be brought under this section for any claim described in section 2(b) of the Act of March 9, 1920 (46 U.S.C. App. 742(b)(1); commonly known as the Suits in Admiralty Act).".

COMPARATIVE TYPE

(Deleted material is in brackets; new material is enclosed in double slashes: "//   \\")

14 U.S.C. 88

88. Saving life and property

(a) In order to render aid to distressed persons, vessels, and aircraft on and under the high seas and on and under the waters over which the United States has jurisdiction and in order to render aid to persons and property imperiled by [flood] //disasters or other emergencies\\, the Coast Guard may:

(1) perform any and all acts//, including law enforcement,\\ necessary to rescue and aid persons and protect and save property;

(2) take charge of and protect all property saved [from marine or aircraft disasters, or floods at which the Coast Guard is present], until such property is claimed by persons legally authorized to receive it or until otherwise disposed of in accordance with law or applicable regulations, and care for bodies of those who may have perished in such catastrophes;

(3) UNCHANGED

(4) UNCHANGED

(b)(1) Subject to paragraph (2), the Coast Guard may //perform any and all acts, including law enforcement, necessary to\\ render aid to persons and protect and save property at any time and at any place at which Coast Guard facilities and personnel are available and can be effectively utilized.

. . . REMAINDER UNCHANGED

14 U.S.C. 96 (NEW)

//96. Air interdiction authority

The Coast Guard may issue orders and make inquiries, searches, seizures, and arrests with respect to violations of laws of the United States occurring aboard any aircraft subject to the jurisdiction of the United States as defined in section 2237 of title 18, United States Code. Any order issued under this section to land an aircraft shall be communicated pursuant to regulations promulgated pursuant to section 2237 of title 18, United States Code.\\

14 U.S.C. 673 (NEW)

//673. Civil penalty for failure to comply with a lawful boarding, order to land, obstruction of boarding, or providing false information

(a) The master, operator, or person in charge of a vessel, or the pilot, operator, or person in charge of an aircraft who fails to comply with an order of a Coast Guard commissioned officer, warrant officer, or petty officer relating to the boarding of a vessel or landing of an aircraft issued under the authority of section 2237 of title 18, United States Code, or section 96 of this title, and communicated according to regulations promulgated under section 2237 of title 18, United States Code, or according to any applicable, internationally recognized standards, or in any other manner reasonably calculated to be received and understood, is liable to the United States Government for a civil penalty of not more than $15,000, which the Secretary may assess after notice and opportunity to be heard. Such hearing shall not be subject to section 554 or section 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence. For intentional violations of this section, a civil penalty of not more than $25,000 shall be assessed.

(b) A vessel or aircraft used to violate an order relating to the boarding of a vessel or the landing of an aircraft issued under the authority of section 2237 of title 18, United States Code, or section 96 of this title, is also liable in rem for the civil penalty assessed under this section.\\

14 U.S.C. 674 (NEW)

//674. Indemnification of Coast Guard members and employees

The Commandant may indemnify any member or employee of the Coast Guard against any claim or judgment against the member or employee if the claim or judgment arises out of an act committed, as determined by the Commandant, within the scope of the official duties of the member or employee in carrying out law enforcement activities. The Commandant may issue such regulations as may be necessary to implement this section.\\

18 U.S.C. 2237 (NEW)

//2237. Sanctions for failure to land or to bring to; sanctions for obstruction of boarding and providing false information

(a)(1) It shall be unlawful for the pilot, operator, or person in charge of an aircraft which has crossed the border of the United States, or an aircraft subject to the jurisdiction of the United States operating outside the United States, to fail to obey an order to land by an authorized Federal law enforcement officer who is enforcing the laws of the United States relating to controlled substances, as that term is defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), or relating to money laundering (sections 1956-57 of this title).

(2) The Administrator of the Federal Aviation Administration, in consultation with the Commissioner of Customs and the Attorney General, shall prescribe regulations governing the means by which a Federal law enforcement officer may communicate an order to land to a pilot, operator, or person in charge of an aircraft.

(b)(1) It shall be unlawful for the master, operator, or person in charge of a vessel of the United States or a vessel subject to the jurisdiction of the United States, to fail to obey an order to bring to that vessel on being ordered to do so by an authorized Federal law enforcement officer.

(2) It shall be unlawful for any person on board a vessel of the United States or a vessel subject to the jurisdiction of the United States to--

(A) fail to comply with an order of an authorized Federal law enforcement officer in connection with the boarding of the vessel;

(B) impede or obstruct a boarding or arrest, or other law enforcement action authorized by any Federal law; or

(C) provide information to a Federal law enforcement officer during a boarding of a vessel regarding the vessel's destination, origin, ownership, registration, nationality, cargo, or crew, which that person knows or has reason to know is false.

(c) This section does not limit in any way the preexisting authority of a customs officer under section 581 of the Tariff Act of 1930 or any other provision of law enforced or administered by the Customs Service, or the preexisting authority of any Federal law enforcement officer under any law of the United States to order an aircraft to land or a vessel to bring to.

(d) A foreign nation may consent or waive objection to the enforcement of United States law by the United States under this section by radio, telephone, or similar oral or electronic means. Consent or waiver may be proven by certification of the Secretary of State or the Secretary's designee.

(e) For purposes of this section--

(1) A 'vessel of the United States' or a 'vessel subject to the jurisdiction of the United States' has the meaning set forth in the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.);

(2) an aircraft 'subject to the jurisdiction of the United States' includes--

(A) an aircraft located over the United States or the customs waters of the United States;

(B) an aircraft located in the airspace of a foreign nation, where that nation consents to the enforcement of United States law by the United States; and

(C) over the high seas, an aircraft without nationality, an aircraft of United States registry, or an aircraft registered in a foreign nation that has consented or waived objection to the enforcement of United States law by the United States;

(3) an aircraft 'without nationality' includes--

(A) an aircraft aboard which the pilot, operator, or person in charge makes a claim of registry, which claim is denied by the nation whose registry is claimed; and

(B) an aircraft aboard which the pilot, operator, or person in charge fails, upon request of an officer of the United States empowered to enforce applicable provisions of United States law, to make a claim of registry for that aircraft.

(4) the term 'bring to' means to cause a vessel to slow or come to a stop to facilitate a law enforcement boarding by adjusting the course and speed of the vessel to account for the weather conditions and sea state; and

(5) the term 'Federal law enforcement officer' has the meaning set forth in section 115 of this title.

(f) Any person who intentionally violates the provisions of this section shall be subject to--

(1) imprisonment for not more than five years; and

(2) a fine as provided in this title.

(g) An aircraft or vessel that is used in violation of this section may be seized and forfeited. The laws relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims, shall apply to seizures and forfeitures undertaken, or alleged to have been undertaken, under any of the provisions of this section; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose. A vessel or aircraft that is used in violation of this section is also liable in rem for any fine or civil penalty imposed under this section.\\

SECTION 581 OF THE TARIFF ACT OF 1930
(19 U.S.C. 1581)

581. Boarding vessels

(a) through (h) UNCHANGED

//(i) As used in this section, the term 'authorized place' includes--

(1) with respect to a vehicle, a location in a foreign country at which United States customs officers are permitted to conduct inspections, examinations, or searches; and

(2) with respect to aircraft to which this section applies by virtue of section 644 of this Act (19 U.S.C. 1644), or regulations issued thereunder, or section 2237 of title 18 of the United States Code, any location outside of the United States, including a foreign country at which United States customs officers are permitted to conduct inspections, examinations, or searches.\\

Tariff Act of 1930 (19 U.S.C. 1581 et seq.)
SECTION 591 (19 U.S.C. 1591) (NEW)

//591. Civil penalty for failure to obey an order to land

(a) The pilot, operator, or person in charge of an aircraft who fails to comply with an order of an authorized Federal law enforcement officer relating to the landing of an aircraft issued under the authority of section 581 of this Act, or section 2237 of title 18, United States Code, and communicated according to regulations promulgated under section 2237 of title 18, United States Code, or according to any applicable, internationally recognized standards, or in any other manner reasonably calculated to be received and understood, is liable to the United States Government for a civil penalty of not more than $15,000, which the Customs Service may assess after notice and opportunity to be heard. Such hearing shall not be subject to section 554 or section 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence. For intentional violations of this section, a civil penalty of not more than $25,000 shall be assessed.

(b) An aircraft used to violate an order relating to the landing of an aircraft issued under the authority of section 581 of this Act, or section 2237 of title 18, United States Code, is also liable in rem for the civil penalty assessed under this section.\\

ACT OF MARCH 9, 1920 (SUITS IN ADMIRALTY ACT)
SECTION 2 (46 U.S.C. APP. 742)

2. Libel in personam

[In cases] //(a) Subject to subsection (b), in cases\\ where if such vessel were privately owned or possessed, or if a private person or property were involved, a proceeding in admiralty could be maintained, any appropriate nonjury proceeding in personam may be brought against the United States or against any corporation mentioned in section 741 of this title...

//(b) No proceeding may be brought under this section against the United States, and no proceeding may be brought under any law against an employee of the United States, for an act or omission of the employee while acting in the scope of employment, with respect to the following claims:

(1) Any claim based on an act or omission of an employee of the United States Government exercising due care in executing a statute or regulation, whether or not the statute or regulation is valid.

(2) Any claim based on the exercise or performance, or a failure to exercise or perform, a discretionary function or duty by a Federal agency or an employee of the United States Government, whether or not involving an abuse of discretion by the agency or employee.

(3) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.

(4) Any claim arising out of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or by any other Federal law enforcement officer.

(5) Any claim arising out of an act or omission of any employee of the United States in administering the Trading with the Enemy Act (50 U.S.C. App. 1 et seq.) or the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

(6) Any claim for damages arising out of the imposition or establishment of a quarantine by the United States.

(7) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights. With regard to acts or omissions of Federal law enforcement officers, this Act shall apply to any claim arising on or after the date of the enactment of this subsection out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution.

(8) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system.

(9) Any claim arising out of the combatant activities of the military or naval forces (including the Coast Guard) during time of war.

(c) In this section, the term 'Federal law enforcement officer' has the meaning set forth in section 115 of title 18, United States Code.\\

ACT OF MARCH 3, 1925 (PUBLIC VESSELS ACT)
SECTION 1 (46 U.S.C. APP. 781)

1. Libel in admiralty against or impleader of United States

[A libel] //(a) Subject to subsection (b), a libel\\ in personam in admiralty may be brought against the United States, or a petition impleading the United States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States: Provided, that the cause of action arose after the 6th day of April, 1920.

//(b) No libel or petition may be brought under this section for any claim described in section 2(b) of the Act of March 9, 1920 (46 U.S.C. App. 742(b)(1); commonly known as the Suits in Admiralty Act).\\

SECTION 501 OF THE FAA ACT OF 1958
(49 U.S.C. 1401)

501. Registration of aircraft nationality

(a) through (d) UNCHANGED

(e) Suspension or revocation

(1) through (2) UNCHANGED

//(3)(A) The registration of an aircraft shall be immediately revoked upon the failure of the pilot, operator, or person in charge of the aircraft to follow the order of a Federal law enforcement officer to land an aircraft, as provided in section 2237 of title 18, United States Code. The Administrator shall as soon as possible notify the owner of the aircraft that the owner no longer holds United States registration for that aircraft.

(B) The Administrator shall establish procedures for the owner of the aircraft to show cause--

(i) why the registration was not revoked, as a matter of law, by operation of subparagraph (A); or

(ii) why circumstances existed pursuant to which the Administrator should determine that, notwithstanding subparagraph (A), it would be in the public interest to issue a new certificate of registration to the owner to be effective concurrent with the revocation occasioned by operation of subparagraph (A).\\

. . . REMAINDER UNCHANGED

SECTION 609 OF THE FAA ACT OF 1958
(49 U.S.C. APP. 1429)

609. Reinspection or reexamination; amendment, suspension, or revocation of certification

(a) through (c) UNCHANGED

//(d)(1) The Administrator shall issue an order revoking the airman certificate of any person if the Administrator finds that:

(A) such person, while acting as the pilot, operator, or person in charge of an aircraft failed to follow the order of a Federal law enforcement officer to land the aircraft as provided in section 2237 of title 18, United States Code, and

(B) that such person knew or had reason to know that he had been ordered to land the aircraft.

(2) If the Administrator determines that extenuating circumstances existed, such as safety of flight, which justified a deviation by the airman from the order to land, the provisions of paragraph (1) of this subsection shall not apply.

(3) The provisions of subsection (c)(3) of this section shall apply to any revocation of the airman certificate of any person for failing to follow the order of a Federal law enforcement officer to land an aircraft.\\

STATEMENT OF NEED AND PURPOSE
AND
SECTION-BY-SECTION ANALYSIS

TITLE I -- INTERDICTION SYSTEMS IMPROVEMENTS

The Coast Guard is authorized to enforce or assist in the enforcement of all applicable Federal laws on, under, and over the high seas and waters subject to the jurisdiction of the United States (14 U.S.C. 2). Coast Guard commissioned, warrant, and petty officers are also deemed to be customs officers (14 U.S.C. 143, 19 U.S.C. 1401). The Coast Guard may board and examine any vessel subject to the jurisdiction of the United States (14 U.S.C. 89). To carry out this broad grant of authority, statutory sanctions are needed against the master or pilot, operator, or person in charge of a vessel or aircraft who fail to obey the order of a Federal law enforcement officer to land or bring to, or who otherwise obstruct the exercise of law enforcement authority.

A civil penalty can be imposed for failure to bring a vessel to a stop upon the command of a customs officer (19 U.S.C. 1581(d)). However, this penalty only applies to vessels in customs waters, and not to vessels on the high seas subject to the jurisdiction of the United States. In addition, a criminal and civil penalty can be imposed for failure to stop a vessel when hailed by a customs officer or other government authority within 250 miles of the territorial sea of the United States (19 U.S.C. 1590(g)(8)). But these penalties may only be imposed on vessels caught with prohibited or restricted merchandise. As a last resort, to compel vessels to bring to, the Coast Guard is authorized to fire into a vessel that fails to stop after warning (14 U.S.C. 637).

In order for the Coast Guard to effectively interdict vessels smuggling contraband, effective sanctions are required -- short of the Coast Guard firing at a vessel -- to compel a vessel to comply with a lawful order to bring to. Without such sanctions drug smugglers can delay or sometimes prevent the exercise of Coast Guard law enforcement boarding authority with impunity.

Such sanctions are necessary to address the following scenario. The operator of a vessel fails to bring his vessel to in order to delay a Coast Guard boarding. After a lengthy pursuit, the vessel is finally boarded and no contraband is found. Or the operator of a vessel avoids being boarded by failing to bring his vessel to and fleeing, eventually entering the territorial waters of a safe haven country. In either case, such a vessel may have initially been carrying contraband -- that has been jettisoned -- or may have been acting as a decoy to divert Coast Guard assets away from other vessels carrying contraband. The use of such tactics by drug smugglers not only thwarts Coast Guard drug law enforcement efforts, but diverts Coast Guard assets from their other missions.

While forcibly obstructing a Federal law enforcement officer is a crime (18 U.S.C. 111, 113), no statute provides penalties, criminal or civil, for non-forcible acts of obstruction during a Coast Guard boarding. Such penalties are needed to serve as a deterrent to prevent confrontational situations from escalating from non-physical obstructions of boardings to physical assaults on boarding officers.

Sanctions are also required to compel persons on board vessels to provide truthful information regarding the vessel's destination, origin, ownership, registration, nationality, cargo, or crew. False information concerning a vessel's nationality or registration can delay the determination as to whether the United States has jurisdiction over a vessel, or hinder attempts to obtain consent from a foreign country for the United States to exercise jurisdiction. This offers drug smugglers the opportunity to jettison contraband and destroy evidence. Truthful information concerning the vessel's destination, origin, ownership, cargo, or crew facilitates the ability of the boarding team to determine whether the vessel may be engaged in drug smuggling. This information is also important for the successful prosecution of drug smuggling cases.

Finally, sanctions are also necessary to enable Federal law enforcement officers to compel aircraft to land. Smuggling by aircraft is a major means by which cocaine is transported to the United States. Aircraft transporting illegal drugs that cross the border of the United States commonly violate flight planning, entry notification, and border clearance rules. However, most drug smuggling aircraft are foreign registered or stateless aircraft that depart from South America, airdrop or land their contraband in a Central American transit country or the high seas, and return to South America without crossing the border of the United States. Since drug traffickers currently employ such tactics, successful air interdiction requires the interdiction of drug smuggling aircraft closer to the source country.

Sections 101 through 106 of this title address these gaps in current United States drug interdiction law by increasing the authority of Federal law enforcement officers over the movement of vessels and aircraft. Criminal penalties are provided by section 101 for intentional failure to obey the order of a Federal law enforcement officer to bring to a vessel or land an aircraft. These same sanctions are imposed against persons on board vessels who intentionally fail to comply with an order in connection with the boarding of a vessel, impede or obstruct a boarding, or provide certain false information during a boarding. Sections 104 and 106 provide the Coast Guard and the Customs Service with the authority to impose civil sanctions for violations of section 101. Section 102 authorizes the FAA to summarily revoke the registration of aircraft, and the airman certificate of pilots, operators or persons in charge of aircraft, for failure to comply with the order of a Federal law enforcement officer to land. Section 103 expressly grants the Coast Guard law enforcement authority over aircraft to enable the Coast Guard to enforce this Act as well as Section 590 of the Tariff Act of 1930, as amended.

In addition, since many drug-trafficking aircraft are of foreign registry, these aviation interdiction law enforcement provisions would serve as an international initiative to: (1) facilitate the establishment of formal or informal agreements between the United States and foreign governments authorizing the United States jurisdiction over drug-trafficking aircraft subject to the jurisdiction of these foreign governments, and (2) serve as a model for legislation by foreign nations that would impose sanctions on aircraft or persons subject to their jurisdiction engaged in drug-trafficking.

SECTION 101. SANCTIONS FOR FAILURE TO LAND OR TO BRING TO; SANCTIONS FOR OBSTRUCTION OF BOARDING AND PROVIDING FALSE INFORMATION

This section amends chapter 109 of title 18 by adding a new section 2237 that makes it unlawful for the pilot, operator, or person in charge of an aircraft to intentionally fail to obey the order of an authorized Federal law enforcement officer to land -- when such an order is issued while the Federal law enforcement officer is enforcing federal law relating to controlled substances or money laundering. This section also makes it unlawful for the master, operator, or person in charge of a vessel to intentionally fail to obey the order of an authorized Federal law enforcement officer to bring to. Finally, this section provides that it is unlawful for the master, operator, or person in charge of a vessel to intentionally: (1) fail to comply with an order of an authorized Federal law enforcement officer in connection with the boarding of the vessel; (2) impede or obstruct a boarding or arrest, or other law enforcement action authorized by any Federal law; or (3) provide certain false information to a Federal law enforcement officer during a boarding of a vessel. Criminal penalties are provided for violations of this section.

Subsection (a) paragraph (1) provides that it shall be unlawful for the pilot, operator, or person in charge of an aircraft which has crossed the border of United States, or an aircraft subject to the jurisdiction of the United States operating outside the United States, to fail to obey an order to land by an authorized Federal law enforcement officer who is enforcing the laws of the United States relating to controlled substances, or relating to money laundering.

Subsection (a) paragraph (2) requires the Administrator of the Federal Aviation Administration, in consultation with the Commissioner of Customs and the Attorney General, to prescribe regulations governing the means by which a Federal law enforcement officer may communicate an order to land to a pilot or pilot, operator, or person in charge of an aircraft.

Subsection (b) paragraph (1) provides that it shall be unlawful for the master, operator, or person in charge of a vessel of the United States or a vessel subject to the jurisdiction of the United States, to fail to obey an order to bring to that vessel on being ordered to do so by an authorized Federal law enforcement officer. Paragraph (2) provides that it shall be unlawful for any person on board a vessel of the United States or a vessel subject to the jurisdiction of the United States to: (1) fail to comply with an order of an authorized Federal law enforcement officer in connection with the boarding of the vessel; (2) impede or obstruct a boarding or arrest, or other law enforcement action authorized by any Federal law; or (3) provide information to a Federal law enforcement officer during a boarding of a vessel regarding the vessel's destination, origin, ownership, registration, nationality, cargo, or crew, which that person knows or has reason to know is false.

Subsection (c) provides that this section does not limit in any way the preexisting authority of a customs officer under section 581 of the Tariff Act of 1930 or any other provision of law enforced or administered by the Customs Service, or the preexisting authority of any Federal law enforcement officer under any law of the United States to order an aircraft to land or a vessel to bring to.

Subsection (d) specifies that a foreign nation may consent or waive objection to the enforcement of United States law by the United States under this section by radio, telephone, or similar oral or electronic means. Consent or waiver may be proven by certification of the Secretary of State or the Secretary's designee.

Subsection (e) defines the terms used in this section. The following terms are defined: "vessel of the United States" or a "vessel subject to the jurisdiction of the United States"; an aircraft "without nationality"; an aircraft "subject to the jurisdiction of the United States"; to "bring to"; and "Federal law enforcement officer".

Subsections (f) sets forth penalties for violation of this section. Any person who intentionally violates the provisions of this section shall be subject to: (1) imprisonment for not more than five years; and (2) a fine as provided in this title.

Subsection (g) authorizes the seizure and forfeiture of any aircraft or vessel that is used in violation of this section. Existing customs laws and duties shall apply to such seizures and forfeitures. This subsection further provides that any vessel or aircraft that is used in violation of this section is also liable in rem for any fine or civil penalty imposed under this section.

SEC. 102. FAA SUMMARY REVOCATION AUTHORITY.

Subsection (a) amends section 501(e) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1401(e)) by adding a new paragraph (3)(A). This paragraph provides for the immediate revocation of the registration of an aircraft upon the failure of the operator of the aircraft to follow the order of a Federal law enforcement officer to land an aircraft, as provided in section 2237 of title 18, United States Code (section 101 of this Act). The Administrator is required to notify, as soon as possible, the owner of the aircraft that the owner no longer holds United States registration for that aircraft. The Administrator is required to establish procedures for the owner of the aircraft to show cause why either: (1) the registration was not revoked, as a matter of law; or, (2) why circumstances existed pursuant to which the Administrator should determine that it would be in the public interest to issue a new certificate of registration to the owner, effective concurrent with the revocation.

Subsection (b) amends section 609 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1429) by adding a new subsection (d). This subsection requires the Administrator to issue an order revoking the airman certificate of any person if the Administrator finds the following: (1) that such person, while acting as the pilot, operator, or person in charge of an aircraft, failed to follow the order of a Federal law enforcement officer to land the aircraft as provided in section 2237 of title 18, United States Code (section 101 of this Act), and (2) that such person knew or had reason to know that he had been ordered to land the aircraft. The airman certificate shall not be revoked if extenuating circumstances existed, such as safety of flight, which justified a deviation by the airman from the order to land. The provisions of subsection (c)(3) of 49 U.S.C. App. 1429 shall apply to any revocation of the airman certificate of any person for failing to follow the order of a Federal law enforcement officer to land an aircraft.

SEC. 103. COAST GUARD AIR INTERDICTION AUTHORITY.

This section amends chapter 5 of title 14, United States Code, by adding a new section 96. This section authorizes the Coast Guard to issue orders and make inquiries, searches, seizures, and arrests with respect to violations of laws of the United States occurring aboard any aircraft subject to the jurisdiction of the United States as defined in section 2237 of title 18, United States Code (section 101 of this Act). Any order issued under this section to land an aircraft shall be communicated pursuant to regulations promulgated pursuant to section 2237 of title 18, United States Code.

SEC. 104. COAST GUARD CIVIL PENALTY PROVISIONS.

This section amends chapter 17 of title 14, United States Code, by adding a new section 673. Subsection (a) authorizes the Secretary to impose a civil penalty of not more than $15,000 upon the master, operator or person in charge of a vessel, or the pilot, operator or person in charge of an aircraft, who fails to comply with an order of a Coast Guard commissioned officer, warrant officer, or petty officer relating to the boarding of a vessel or landing of an aircraft issued under the authority of section 2237 of title 18, or section 96 of title 14, United States Code (section 101 or section 103 of this Act). The Secretary is authorized to impose a civil penalty of not more than $25,000 for intentional violations. This order is to be communicated according to regulations promulgated under section 2237 of title 18, United States Code, or according to any applicable, internationally recognized standards, or in any other manner reasonably calculated to be received and understood. Notice and opportunity to be heard are required before imposing this penalty. However, hearings shall not be subject to section 554 or section 556 of title 5, United States Code, but shall provide a reasonable opportunity to be heard and to present evidence. Subsection (b) provides that any vessel or aircraft used in violation of sections 101 or 103 is also liable in rem for the civil penalty assessed under this section.

SEC. 105. CUSTOMS ORDERS.

Section 105 adds a new subsection (i) to section 581 of the Tariff Act of 1930 (19 U.S.C. 1581) that defines "authorized place" as that term is used in section 581. Authorized place is defined as the following: (1) with respect to a vehicle, a location in a foreign country at which United States customs officers are permitted to conduct inspections, examinations, or searches; and (2) with respect to aircraft to which this section applies by virtue of section 644 of this Act (19 U.S.C. 1644), or regulations issued thereunder, or section 2237 of title 18, United States Code, any location outside of the United States, including a foreign country at which United States customs officers are permitted to conduct inspections, examinations, or searches. This amendment clarifies the law enforcement authority of customs officers in foreign countries and specifies that in regard to aircraft, the provisions of section 2237 of this Act apply in such authorized places.

SEC. 106. CUSTOMS SERVICE CIVIL PENALTY PROVISIONS.

Section 106 adds a new section 591 at the end of part V of title IV of the Tariff Act of 1930 that authorizes the Customs Service to impose civil penalties for failure to comply with the order of an authorized Federal law enforcement officer relating to the landing of an aircraft issued under the authority of section 581 of the Tariff Act of 1930 or section 2237 of title 18, United States Code. This section contains the same hearing and penalty provisions as the Coast Guard civil penalty section -- section 104.

TITLE II -- OTHER LAW ENFORCEMENT SYSTEMS IMPROVEMENTS
SEC. 201. COAST GUARD LAW ENFORCEMENT AUTHORITY DURING NATURAL DISASTERS.

This section amends section 88 of title 14, United States Code. This amendment is needed to grant the Coast Guard express law enforcement authority to render aid to persons and property ashore imperiled by "disasters or other emergencies." Section 88 of title 14, United States Code, provides that the Coast Guard may render assistance to persons and property imperiled by "flood." This includes the authority to perform any and all acts necessary to rescue and aid persons and protect and save property.

The need for this type of law enforcement authority arose after Hurricane Hugo in September 1989. Civil disorder broke out in the U.S. Virgin Islands, especially St. Croix, and local police and the National Guard could not ensure the safety of persons and property.

As widespread looting, arson, and violence broke out over the island, many of the local populace and tourists banded together to seek shelter and safety. Over three hundred individuals swam out to moored Coast Guard ships.

The only Federal presence in the area capable of responding in a timely and effective manner were several Coast Guard cutters on drug enforcement patrol. In the course of providing search and rescue and communications assistance, the Coast Guard was asked by local authorities if its personnel could go ashore to restore law and order. A determination was made that the Coast Guard had the authority to render aid to and protect persons and property ashore. However, the Coast Guard lacked the express authority to perform the requested law enforcement functions ashore. It was several days before other Federal law enforcement officers could be flown in to respond to this emergency. This provision will expressly authorize the Coast Guard to perform law enforcement duties under these circumstances.

Paragraph (1) of this section amends subsection (a) of section 88 of title 14, United States Code, to authorize the Coast Guard to render aid to persons and property imperiled by disasters or other emergencies. Currently, subsection (a) authorizes the Coast Guard to render aid to persons and property imperiled only by flood.

Paragraph (2) of this section amends subsection (a) paragraph (1) of 14 U.S.C. 88 to authorize the Coast Guard to perform any and all acts, including law enforcement, necessary to rescue and aid persons and protect and save property. This amendment expressly includes the authority for the Coast Guard to perform "law enforcement" within the authority to perform "all acts" under the current statute.

Paragraph (3) of this section amends subsection (a) paragraph (2) of 14 U.S.C. 88 to authorize the Coast Guard to take charge of and protect all property saved by the Coast Guard as provided by this section. Under current law, the Coast Guard is limited to taking charge of and protecting all property saved from "marine or aircraft disasters, or floods."

Paragraph (4) of this section amends subsection (b) paragraph (1) of 14 U.S.C. 88 to authorize the Coast Guard to perform any and all acts, including law enforcement, necessary to aid persons and protect and save property at any time and at any place at which Coast Guard facilities and personnel are available and can be effectively utilized. This amendment expressly includes the authority for the Coast Guard to perform "law enforcement" within the authority to perform "all acts" under the current statute.

SEC. 202. INDEMNIFICATION OF COAST GUARD MEMBERS AND EMPLOYEES.

This section amends chapter 5 of title 14, United States Code, by adding a new section 674. This section authorizes the Commandant of the Coast Guard to indemnify any member or employee of the Coast Guard against any claim or judgement that arises out of an act committed, as determined by the Commandant, within the scope of the member's or employee's official duties in carrying out law enforcement activities. This section provides that the Commandant may issue regulations to implement this section. The language in this section is identical to the indemnification authority granted to the Administrator of the FAA by section 313 of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1354(e)). Currently, the Coast Guard has limited indemnification authority granted by 14 U.S.C. 637. This section provides that Coast Guard officers shall be indemnified for damages or penalties resulting from them firing into a vessel that fails to stop after a warning short is fired.

The expanded indemnification authority of this section is needed to allow the Commandant to indemnify Coast Guard personnel carrying out their official law enforcement duties. The following statutes provide similar indemnification authority to other agencies: 10 U.S.C. 1054, 42 U.S.C. 2458a, 22 U.S.C. 2702, 28 U.S.C. 2679(b), 38 U.S.C. 4116, 42 U.S.C. 233.

SEC. 203 AMENDMENTS TO SUITS IN ADMIRALTY AND PUBLIC VESSELS ACT.

This section amends the Act of March 9, 1920 (46 U.S.C. App. 42), commonly known as the Suits in Admiralty Act, and the Act of March 3, 1925 (49 U.S.C. App. 81), commonly known as the Public Vessels Act. These amendments are necessary to clarify the law regarding tort liability of the United States under admiralty law. In 1960, Congress made a technical amendment to the Suits in Admiralty Act to encompass all admiralty actions in order to remove uncertainty over the proper forum for a claim against the United States. There is no evidence that Congress intended by this amendment to expand the waiver of sovereign immunity of the United States. But not all Federal courts have held that the discretionary function and customs detention exceptions to waiver of sovereign immunity of the Federal Tort Claims Act are incorporated into the Suits in Admiralty Act by implication.

The discretionary function and the customs detention exception from the United States' waiver of sovereign immunity are of particular importance to the Coast Guard. Coast Guard members are the subject of civil suits arising from law enforcement boardings claiming damage to boarded vessels. The incongruous result under current law is that the United States cannot be held liable for damage to private property resulting from customs seizures ashore, but can be found liable for the same conduct occurring on navigable waters. Litigating these cases requires a significant dedication of time and resources. Moreover, to receive the benefit of the discretionary function exception, the Coast Guard is required to produce all its law enforcement publications and regulations. We have consistently taken the position, however, that at least portions of these documents are privileged and exempt from disclosure, because release would reveal sensitive law enforcement information that could assist violators circumvent the law, or threaten the safety of Coast Guard personnel.

This provision expressly incorporates the Federal Tort Claims Act exceptions into the Suits in Admiralty Act and the Public Vessels Act to hold the United States to the same liability standard for law enforcement actions both ashore and afloat. In addition, the proposed amendment to section 742 paragraph (5) incorporates an exception for claims arising under the International Emergency Economic Powers Act (IEEPA)(50 U.S.C. 1701 et seq.). This addition to the Federal Tort Claims Act exceptions was incorporated into this Act because law enforcement activities concerned with enforcing the Trading with the Enemy Act can simultaneously involve enforcing the IEEPA.

Subsection (a) of this section amends section 2 of the Act of March 9, 1920 (46 U.S.C. App. 742; commonly known as the Suits in Admiralty Act) by incorporating nine of the exceptions to liability provided by the Federal Tort Claims Act (28 U.S.C. 2680) into this Act. Subsection (b) of this section amends section 1 of the Act of March 3, 1925(46 U.S.C. App. 781; commonly known as the Public Vessels Act) by incorporating the same exceptions of subsection (a) into this Act.