



RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST

2000-0268

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RESPONSE TYPE FINAL PARTIAL

REQUESTER

Joyce Battle

DATE

OCT 23 2000

PART I. - INFORMATION RELEASED

- No additional agency records subject to the request have been located.
- Requested records are available through another public distribution program. See Comments section.
- APPENDICES Agency records subject to the request that are identified in the listed appendices are already available for public inspection and copying at the NRC Public Document Room.
- APPENDICES **B** Agency records subject to the request that are identified in the listed appendices are being made available for public inspection and copying at the NRC Public Document Room.
- Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 2120 L Street, NW, Washington, DC.
- APPENDICES **B** Agency records subject to the request are enclosed.
- Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- We are continuing to process your request.
- See Comments.

PART I.A -- FEES

AMOUNT *
\$

- You will be billed by NRC for the amount listed.
- None. Minimum fee threshold not met.
- You will receive a refund for the amount listed.
- Fees waived.

* See comments for details

PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE

- No agency records subject to the request have been located.
- Certain information in the requested records is being withheld from disclosure pursuant to the exemptions described in and for the reasons stated in Part II.
- This determination may be appealed within 30 days by writing to the FOIA/PA Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Clearly state on the envelope and in the letter that it is a "FOIA/PA Appeal."

PART I.C COMMENTS (Use attached Comments continuation page if required)

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

Carol Ann Reed

RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) / PRIVACY ACT (PA) REQUEST

2000-0268

OCT 23 2000

PART II.A -- APPLICABLE EXEMPTIONS

APPENDICES
C & D

Records subject to the request that are described in the enclosed Appendices are being withheld in their entirety or in part under the Exemption No.(s) of the PA and/or the FOIA as indicated below (5 U.S.C. 552a and/or 5 U.S.C. 552(b)).

- Exemption 1: The withheld information is properly classified pursuant to Executive Order 12958.
- Exemption 2: The withheld information relates solely to the internal personnel rules and procedures of NRC.
- Exemption 3: The withheld information is specifically exempted from public disclosure by statute indicated.
 - Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
 - Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
 - 41 U.S.C., Section 253(b), subsection (m)(1), prohibits the disclosure of contractor proposals in the possession and control of an executive agency to any person under section 552 of Title 5, U.S.C. (the FOIA), except when incorporated into the contract between the agency and the submitter of the proposal.
- Exemption 4: The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated.
 - The information is considered to be confidential business (proprietary) information.
 - The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.790(d)(1).
 - The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.790(d)(2).
- Exemption 5: The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. Applicable privileges:
 - Deliberative process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.
 - Attorney work-product privilege. (Documents prepared by an attorney in contemplation of litigation)
 - Attorney-client privilege. (Confidential communications between an attorney and his/her client)
- Exemption 6: The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
 - (A) Disclosure could reasonably be expected to interfere with an enforcement proceeding (e.g., it would reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrongdoing or a violation of NRC requirements from investigators).
 - (C) Disclosure would constitute an unwarranted invasion of personal privacy.
 - (D) The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
 - (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
 - (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
- OTHER (Specify)

PART II.B -- DENYING OFFICIALS

Pursuant to 10 CFR 9.25(g), 9.25(h), and/or 9.65(b) of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The person responsible for the denial are those officials identified below as denying officials and the FOIA/PA Officer for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL		
			EDO	SECY	IG
Janice Dunn Lee	Director, Office of International Programs	Appendix C	✓		
Lawrence Chandler	Associate General Counsel for Hearings, Enforcement and Administration	Appendix D/1		✓	
Sandra M. Joosten	Executive Assistant, Office of the Secretary	Appendix D/2 & D/3		✓	

Appeal must be made in writing within 30 days of receipt of this response. Appeals should be mailed to the FOIA/Privacy Act Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, for action by the appropriate appellate official(s). You should clearly state on the envelope and letter that it is a "FOIA/PA Appeal."

**APPENDIX B
RECORDS BEING RELEASED IN THEIR ENTIRETY
(If copyrighted identify with *)**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	Undated	Comments on Adding an Entities List to Part 110. (1 page)
2.	Undated	Fact Sheet - Impact of India and Pakistan Sanctions. (1 page)
3.	Undated	Fact Sheet - NRC Authorized Exports to India and Pakistan. (1 page)
4.	Undated	NRC-AERB Projects. (1 page)
5.	Undated	India and Pakistan Sanctions. (1 page)
6.	Undated	"What do you mean by materials 'of significance to the nuclear programs of India or Pakistan.'" (1 page)
7.	Undated	"If asked:....." (1 page)
8.	Undated	Journal of Commerce Articles on Exports of NRC-Controlled Materials to India and Pakistan: Chronology of Events. (2 pages)
9.	05/21/98	Memo from Maria Lopez-Otin to Marty Virgilio, subject: India Nuclear Explosive Tests. (1 page)
10.	06/17/98	Handwritten notes re India-Pakistan IWG, with attachments. (5 pages)
11.	10/28/98	Memo from Karen Cyr to Commission, subject: Veterans Affairs and Department of Agriculture FY 1999 Appropriation Bills. (3 pages) [Note: the bracketed portions are outside the scope of the request.]
12.	03/08/99	Handwritten note from Betty to Ron, with attachments. (4 pages)
13.	Undated	Guidelines on USG Interacton With India and Pakistan. (2 pages)

**APPENDIX C
RECORDS BEING WITHHELD IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	Undated	NRC Possible Discretionary Sanctions. (1 page) EX. 5
2.	6/1/98	Memo from R. Hauber to E. Ward-McKeen. (1 page) EX. 5

**APPENDIX D
RECORDS BEING WITHHELD IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	Undated	Note from Joe G. to Trip/Grace providing comments. (1 page) EX. 5
2.	Undated	Draft memo from Trip Rothschild to Maria Lopez-Otin, subject: Legal Restrictions on Nuclear Exports to India. (3 pages) EX. 5 - Attorney-Client Privilege
3.	6/25/98	Memo from Trip Rothschild to Maria Lopez-Otin, subject: Legal Restrictions on Nuclear Exports to India and Pakistan. (7 pages) EX. 5 - Attorney-Client Privilege

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Comments on Adding an Entities List to Part 110

Pros:

- 1 Provides an additional tool to deal with the politics and perceptions of proliferation. Although NRC's general licenses are limited to forms and quantities of materials and equipment considered insignificant in respect to nuclear proliferation, an Entities List in Part 110 could be used to forbid even those forms and quantities to be generally authorized for export to specified entities whose activities raise proliferation concerns in non-embargoed countries. This device could reduce political pressure to add countries to the list of embargoed destinations.

Cons:

1. Introduces a concept (control by specific destination) which is absent in the language of the Atomic Energy Act (control by country).
2. The export control effect may be illusory; commodities under NRC general export licenses could be transferred to Embargoed Entities with little risk of discovery. The typically low monetary and technical values of such commodities would not justify end-use verification by U.S. enforcement agents.
3. Will further complicate the regulations in Part 110. May lead to confusion, real or ingenuous, which could be used to explain an unauthorized export ("The company wasn't on the Entities List so I thought it was okay to export to them.")
4. Will require additional NRC administrative effort to include and update the Entities List. The degree of effort depends on the approach. Frequent NRC rule changes= High impact. Linking/cross-referencing NRC's export regulations to the Department of Commerce Entities List or another list which can be updated easily without engaging in NRC rulemaking= Lower impact.

B/1

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FACT SHEET

NRC Authorized Exports to India and Pakistan

The Nuclear Regulatory Commission (NRC) is responsible for licensing exports of nuclear equipment (facilities and components), materials and related commodities under the Atomic Energy Act of 1954, as amended. Under the terms of the Nuclear Non-Proliferation Act amendments of 1978, the NRC has not licensed exports of nuclear equipment, reactor fuel or other materials of significance to the nuclear programs of India or Pakistan since 1980, in light of the refusal by both countries to adopt full-scope safeguards under the International Atomic Energy Agency, and because the U.S. has not entered into the required Agreement for Peaceful Nuclear Cooperation with either country.

NRC General Licenses for Exports to Restricted Destinations

The NRC export regulations allow any person to export, under general licenses, certain forms and quantities of nuclear and nuclear-related materials which have been determined, in formal consultation with Executive Branch agencies, as not being useful in the production of nuclear materials or nuclear explosive devices. Embargoed Destinations (currently Cuba, Iran, Iraq, Libya and North Korea) are ineligible to receive any general license exports. Although Restricted Destinations (currently Afghanistan, Andorra, Angola, Myanmar, Djibouti, India, Israel, Oman, Pakistan and Syria) are subject to greater limitations than other countries, they are not barred altogether from receiving some exports such as: up to 3 grams of enriched uranium or 1/10 gram of plutonium in sensing components in instruments; one kilogram of natural uranium per shipment not to exceed 100 kilograms of uranium per year; tritium in dispersed forms such as luminescent light sources and paint, accelerator targets, calibration standards, labeled compounds in quantities of 1.03 milligrams per item, 103 milligrams per shipment and 1.03 grams per year; americium-241 in industrial process equipment in quantities not to exceed 6.16 grams per device or 61.6 grams per year to any one country; deuterium in individual shipments of 1 kilogram not to exceed 5 kilograms per year to any one country, and nuclear-grade graphite in bulk form in individual shipments of 100 kilograms, not to exceed 2,000 kilograms per year to any one country.

Given the stringency of the NRC controls, no changes were deemed necessary following the nuclear tests by India and Pakistan. Changing the classification of India and Pakistan in NRC's regulations, from Restricted Destinations to Embargoed Destinations, was not considered appropriate because U.S. sanctions, while stringent and far-reaching, were not intended to constitute an embargo of either country.

B/3

NRC-AERB Projects

- In 1995, the Nuclear Regulatory Commission reached agreement with the Indian Atomic Energy Regulatory Board (AERB) to pursue three reciprocal nuclear safety projects in (1) fire safety; (2) symptom-based emergency procedures; (3) design issues (backfits and design modifications). These projects were given interagency clearance by the Departments of State, Energy, Commerce, and the Arms Control and Disarmament Agency.
- In May 1997 AERB Chairman P. Rama Rao wrote to the Commission offering the use of Indian Department of Atomic Energy funding to cover Indian expenses, and all NRC expenses in India. In September 1997 the Commission accepted this offer.
- NRC Resources: 1/3 of an FTE to support overall assistance. Each project would be supported by one NRC staff member, and each project would entail approximately four weeks' worth of work (preparation, 1-2 weeks' workshop in India, wrap-up). In addition, one manager would be needed to supervise the three projects. \$8000 for NRC staff international travel.
- AERB Resources: The Government of India agreed to pay for all expenses of the Indian team to come to the U.S. as well as work done in India, and would also pay for all expenses of the NRC team in India.

Sanctions

- Glenn-Symington Amendment to the International Security Assistance and Arms Export Control Act of 1976 is not applicable because that amendment provides that no funds appropriated under the Foreign Assistance Act or the Arms Export Control Act may be used to provide economic assistance or military assistance to any non-nuclear weapons state that detonates a nuclear explosive device after 1977. The President can waive this prohibition by certifying to the Congress that termination of such assistance would be seriously prejudicial to the achievement of U.S. non-proliferation objectives or otherwise jeopardize the common defense and security.
 - The NRC safety assistance provided to India is funded by India or NRC funds received under the Energy and Water Development Appropriations Acts.
- Export-Import Bank: Concerns termination of export financing and credit -- does not apply to NRC-AERB projects.
- Section 129 does not apply to NRC-AERB projects because they only entail publicly available information (no transfer of technology, or provision of special nuclear materials)
- Under the circumstances, although the three NRC/AERB projects are not statutorily proscribed, it would be inappropriate to proceed with such exchanges until the Administration and Congress have completed a thorough policy review of the implications of India's actions and developed a considered U.S. national response.
- I have therefore instructed the NRC staff that all efforts related to such projects or any others regarding India be immediately suspended.

B/4

2/1

INDIA AND PAKISTAN SANCTIONS

The Nuclear Regulatory Commission (NRC) is responsible for licensing of exports of nuclear facilities, major critical components, equipment, nuclear materials and related commodities under the 1954 Atomic Energy Act. Under the terms of the Nuclear Non-Proliferation Act of 1978, NRC has not licensed exports of any of these items since 1980, in light of the refusal by both India and Pakistan to adopt full scope safeguards and because a required Section 123 Agreement for Peaceful Cooperation with the United States is not in effect with either country.

In 1994-5, the NRC reached agreement with its counterpart regulatory agency in India, the Atomic Energy Regulatory Board, to pursue three reciprocal non-sensitive nuclear safety projects in fire safety, symptom-based emergency procedures, and design issues (backfits and modifications). No activities implementing these projects had begun prior to India's explosives tests in early May. These projects are not statutorily proscribed. However, immediately following India's tests, the NRC suspended all such cooperation with India. No nuclear safety cooperation will proceed unless an interagency decision determines that it is essential in order to prevent or correct a radiological hazard posing a significant risk to public health and safety which cannot realistically be met by other means. There has been no parallel nuclear safety initiative undertaken with Pakistan.

Per the contract, a restricted destination for NRC general export licensing purposes.

B/5

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What do you mean by materials "of significance to the nuclear programs of India or Pakistan?"

Answer:

We exclude specific forms and quantities of particular materials which have been determined by the Nuclear Regulatory Commission, in formal consultation with Executive Branch agencies, as not being useful in the production of nuclear materials or nuclear explosive devices. Some such materials are allowed to be exported to India and Pakistan within the limits specified for "restricted destinations" in the general export license provisions of NRC's regulations. For example, U.S. oil exploration and service companies operating in India and Pakistan have used this authority to export well-logging materials to those operations. Shipments of radioactive isotopes for medical diagnostic or therapeutic procedures would be another example of allowable exports. In addition, one U.S. company holds a specific NRC license to export a uranium-containing catalyst to existing and prospective acrylonitrile production plants in various countries. India was authorized as a recipient country if an acrylonitrile¹ plant is built and goes into production there. However, no plant has been built in India and the U.S. exporter has proposed to remove India from its license for that reason and in light of India's nuclear tests.

¹Acrylonitrile is a colorless, liquid organic compound used in the manufacture of acrylic rubber and fibers.

B/6

H 24 R

If asked:

Question: What is meant by materials "of significance to the nuclear programs of India and Pakistan?"

Answer:

We exclude specific forms and quantities of materials which have been determined by the Nuclear Regulatory Commission, in formal consultation with the Executive Branch agencies, as not being useful in the production of nuclear materials or nuclear explosive devices. Some such materials are allowed to be exported to India and Pakistan within the limits specified for "restricted destinations" in the general export license provisions of NRC's regulations.

For example, U.S. oil exploration and service companies operating in India and Pakistan have used this authority to export well-logging materials to those operations. Shipments of radioactive isotopes for medical diagnostic or therapeutic procedures would be another example of allowable exports.

In addition, one U.S. company holds a specific NRC license to export a uranium-containing catalyst to acrylonitrile¹ production plants in various countries, including, if built, a prospective plant in India. The U.S. company has proposed to remove India from its license in light of India's nuclear tests.

B/7

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K.

JOURNAL OF COMMERCE ARTICLES ON EXPORTS OF NRC-CONTROLLED MATERIALS TO INDIA AND PAKISTAN: CHRONOLOGY OF EVENTS

Feb. 17-18 -- Betty Wright, NRC/OIP Export Licensing Officer, is contacted by Mr. Mork, a shipper who had been contacted by a Mr. Allid Ahmad and asked to go to a Milwaukee gas station and pick up two gas cylinders, one of hydrogen and one of deuterium and take them to an unnamed company in Houston, perhaps to be exported. This seemed suspicious to Mr. Mork who asked Ms. Wright if this was legal. Ms. Wright explained NRC's export licensing requirements to Mr. Mork and then followed up with a call to the NRC/NMSS safeguards staff who contacted FBI headquarters. In the meantime, Mr. Mork called Betty Wright to say he contacted the receiving company in Houston and they had dealt in the past with Ahmad in shipping things to Pakistan for "military use." This too was reported to the NMSS safeguards staff who then contacted U.S. Customs. A Customs Special Agent said he would talk to Mr. Mork and follow up.

Feb. 18 -- JOC article, "Loophole lets nuke materials into India." The article says that Customs officials have repeatedly stopped nuclear materials destined for India, including to India's Department of Atomic Energy [OIP note: presumably generally-licensed radio-isotopes in quantities and forms which have been determined by the U.S. Government to be of no proliferation significance]. The article goes on to say that the Customs officials have been ordered to release the shipments because of "loopholes in U.S. export controls, federal officials say." The article contrasts NRC export regulations which continue to allow certain nuclear exports to organizations on the Department of Commerce "entities list" to which no DOC controlled commodities can be sent as a result of U.S. trade sanctions following the Indian and Pakistani nuclear tests last year. The article also reported that NRC proposed to move India and Pakistan from its Restricted Destinations list to the Embargoed Destinations list, but that this proposal was not supported by the Administration.

-- NMSS safeguards staff receive a call from the JOC reporter who wrote the "Loophole...." article, requesting information on the inquiries made on the Milwaukee gas station matter and the referral of it for investigation. NMSS advises OPA and OPA. In a separate internal email, NMSS staff repeat information from the JOC reporter about the Milwaukee matter in which one of the two cylinders ("250 lbs each") is said to contain tritium?!, not simple hydrogen, and includes the assertion that the cylinders are being exported under an NRC general license. OIP sends email to NMSS and OPA emphasizing that NRC general licenses allow only millicurie quantities of tritium to be exported and only in dispersed forms, not as a gas.

Feb. 22 -- JOC article, "Snarl on sanctions"

Feb. 25 -- JOC article, "Probe exposes gap in export rules for nuclear materials"

Feb. 25 -- Dept. of State memo requesting DOE analysis of claims of JOC "experts" that gram quantities of deuterium must be controlled because of usefulness in nuclear weapons.

Feb. 26 -- Dept. of State memo provides contingency press guidance on the JOC articles, including the significance (no significance) of small quantities of deuterium in nuclear weapons and the Administration's position that India and Pakistan should remain on the NRC Restricted Destinations export list, rather than being moved to the NRC Embargoed Destinations list.

B/8

Stir in the trade press that India and Pakistan could still receive nuclear exports authorized under NRC General Licenses, even after the U.S. imposed sanctions banning commerce. (Sue Gagner and Betty Wright worked it.) A move to the embargoed list would have precluded this, but the Executive Branch decided not to pursue this avenue.

The General Licenses still stand. Quantities authorized are very small - mostly in the ^{microgram} ~~microgram~~ range.

We received a call this week about a request to pick up - from a service station - cylinders of hydrogen and deuterium to take to Houston. Appears the shipment was ordered by Pakistan. Reported to John Davidson.

Media followup now claims that even small amounts of deuterium can be useful to a nuclear weapons program. Reporter SEEMS very knowledgeable. We currently control only large amounts of deuterium, which can be used as a moderator in nuclear weapons programs - NOT small amounts. We do control very small amounts of tritium and Commerce controls small amounts of lithium.

State (Robin DelaBarre) has now asked DOE to rule on whether small amounts of deuterium are critical elements in a weapons program or if, in fact, current controls are adequate for nonproliferation purposes. State is waiting for DOE's response. We are not weapons experts. We set our controls at levels identified for us by the Executive Branch agencies which are. If we have to revise these levels, we will do so when the Executive Branch advises.

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

OFFICE OF THE
COMMISSIONER

May 21, 1998

NOTE TO: Marty Virgilio, OCM/SAJ

FROM: Maria Lopez-Otin, OCM/NJD

A handwritten signature in black ink, appearing to be "MLO" or similar, written over the "FROM:" line.

SUBJECT: INDIA NUCLEAR EXPLOSIVE TESTS

Commissioner Diaz read with interest the May 20, 1998, limited distribution memorandum from the Chairman to the Commission on the meeting she attended, on the Commission's behalf, concerning application of sanctions to India following the subject tests. He looks forward to receiving details of the meeting, perhaps in the form of a debriefing. In the meantime, may we please have a copy of the memorandum the Chairman sent instructing "...the NRC staff to suspend all activities related to the projects and any other cooperation with India, pending decisions by the Administration and Congress on the application of statutory and policy sanctions measures"? It would also be most helpful if we could have OGC provide us with an analysis of the Nuclear Non-Proliferation Act of 1978 and the 1994 Nuclear Proliferation Prevention Act as it relates to our Part 110 responsibilities. (There may be some lessons to be learned from this incident.)

cc: B. Jones
S. Crockett
K. Cyr
C. Stoiber

B/9

India-Pakistan IWG (B. Jauwer)

6/17/98

- ① PC Mtg: ^{Casebeer to fax to KH tonight} agd on all proposed; still some tech details to be worked
- ② Coordinating fact sheets for series of briefings
 - a) business / Talbot / Treasury / Defense 2³⁰ Th. briefing
 - b) press / White House / NEC / NSC large scale business roll-out event
- inc. Eisenstadt
 - c) Public list of parastatal / private sector actors - in 10 days; inter-agency cleared - will brief around this problem - ^{Mtg Friday (S)} 11-12³⁰ #6909
- ③ Talbott briefing: ^{comments by lepm today} 1 page handout w/ broad strategy / overview
 - a) do short introduction, short comment by other agencies present (for affairs / policy press, not trade press), take Qs.
 - b) Underfirth testimony House Int'l Rels / Asia Subcommittee
- take Qs & go back to agencies for specific details; Admin's 1st interaction w/ Hill post PC; calls to key members made to be (by White House; check w/ leg / NSC before agencies make own call
- ④ Friday briefing: above principles plus: No time yet sched.
AID EXIM TDA ACDA USDA; Treasury answering for banking sector, minus FDA
- ⑤ Agd that Executive Order not retroactive
- ⑥ fact sheet focus rather than press statements
- provide to DOS, cleared interagency, by 4pm Thurs.
- ⑦ USIF at 2nd tier meeting Thurs.

B/10

DOC/BXA
6/17/98

PROHIBIT SPECIFIC DUAL-USE EXPORTS

Exports of dual-use items controlled for nuclear or missile nonproliferation reasons under the Export Administration Act will be denied to all end users in India and Pakistan, with an exception for commercial aircraft safety and maintenance equipment, and for computers above 2,000 MTOPS which will be controlled under the Export Administration Act for national security purposes. These measures are in response to the requirements of the Glenn amendment.

On a discretionary basis under the Export Administration Act, the United States will control all exports with a presumption of denial, including those not presently requiring a license, to a published list of Indian and Pakistani government entities involved in nuclear and missile programs. The United States will also publish a list of Indian and Pakistani government entities involved in military activities and will require a license, with a presumption of denial, for all items controlled by the Export Administration Regulations with the exception of common use items (those under category EAR99).

The United States government will also identify private entities supporting India's and Pakistan's nuclear or missile programs under the Enhanced Proliferation Control Initiative (EPCI). This will result in a broader licensing requirement for those entities with a case-by-case review of such licenses and a presumption of denial for transactions that would support prohibited activities.

Favorable consideration will continue to be given on a case-by-case basis to other dual use exports, U.S. business relationships, and other arrangements providing benefit to the U.S. with private and public Indian and Pakistani entities. License Exceptions will remain intact.

**1) IWG Wednesday 6/17 3:30 p.m. at State, room 6824.
Subject: Press roll-out for Friday 6/19.**

You, and/or your representative, and/or your PA person are invited to an interagency meeting to synchronize the participation of the various agencies in a press event this Friday. The press event will provide information on the sanctions on India and Pakistan, and will include a Q&A period. With any luck, the 6/16 Principals' meeting will have made the pending decisions--if not, we'll have to take a second look at this press event.)

Please bring a draft press release, describing the programs your agency has in India and in Pakistan, and how the sanctions impact your programs.

I know that some of you don't yet have the guidance you need in order to predict the impact of sanctions on your agency's operations. If that's your situation, bring a draft addressing only the summary of your programs, and we'll go on from there. (See the second IWG below.)

2) Another IWG is scheduled for Thursday 6/18, 1:30 to 2:30, at State in room 6245, to start making some decisions about programs/agencies whose needs haven't been addressed yet. The agencies whose programs have already been worked are encouraged to send a delegate. This would be helpful, since within the constraint of the law we will be trying to apply some of the same principles that have emerged for the first tier of agencies: minimize impact on the poor, preserve credibility of institutions, preserve contract sanctity etc.

PLEASE CALL MS. HINES AT 647-7489 TO CLEAR YOURSELF INTO EITHER OR BOTH OF THESE MEETINGS. SHE'LL NEED YOUR DATE OF BIRTH AND SSN IF YOU WANT TO BE PRE-CLEARED.

Best, Casey

FACT SHEET ON INDIA AND PAKISTAN SANCTIONS

The United States imposed sanctions according to U.S. law on India and Pakistan as result of their nuclear tests in May.

In imposing these sanctions, we seek: to influence Indian and Pakistani behavior; to target the governments, rather than the people; to maximize the impact on Indian and Pakistani firms; and to minimize the damage to U.S. interests.

Our goals are that Indian and Pakistan: halt further testing; sign the CTBT without conditions; not deploy missiles; cut-off fissile material production; cooperate in FMCT negotiations; maintain restraints on sharing nuclear and missile technology; reduce bilateral tensions, including Kashmir.

Accordingly, the United States has:

- Terminated Foreign Assistance to India and Pakistan under the Foreign Assistance Act, except for humanitarian assistance or food, or other agricultural commodities.
- Terminated Foreign Military Sales under the Arms Export Control Act and licences for the export of any item on the U.S. Munitions List.
- Terminated Foreign Military Financing under the Arms Export Control Act, although none had been made available to either India and Pakistan.
- Halted any new commitments of USG credits and credit guarantees by USG entities (EXIM, OPIC, CCC) after May 13 in the case of India and stopped processing any project proposals for Pakistan.
- Gained G-8 support to postpone consideration of non-basic man needs loans for India and Pakistan by the International Financial Institutions, while not opposing basic human needs loans, to bolster the effect of the Glenn Amendment requirement that the U.S. oppose IFI loans.
- Prohibited U.S. bank loans to federal, state, and local governments in India and Pakistan, and parastatals involved in WMD and missile programs.
- Prohibited Dual Use Exports of nuclear and missile controlled items to the Governments and parastatals involved in WMD activities.
- Restricted senior-level contacts at the Assistant Secretary level and above.

Add bullet on military-military relationship bullet

INDIA/PAKISTAN IWG MEETING

JUNE 18, 1998

Conference Room 6245

NAME OFFICE PHONE FAX

1	Casey Casper	EB/EST	202-647-6203	202-647-4064
2	FRANK JENKIN	EB	77951	75713
3	JOHN ROBERTS	DOC/BXA/EP	202-482-0171	202-482-6088
4	Farah Press	DOC/BXA/EP	482-3772	482-6088
5	George Pickett	State/SA	736-4331	-4333
6	Jon Gaer	NSC/NEA	456-9121	456-9120
7	Chaz Kessler	State/PM/EPA	647-6968	736-4434
8	Steven Buckbrum	State/DES	647-4658	647-6876
9	Jerry Taylor	FIELD/NE	712-0078	
10	Bob Boddy	FAA	202-2678125	202-267-5302
11	George Look	OSD/STR	703-695-4503	703-693-4576
12	Allina Komonowski	OSD/ISA/NSA	703-697-1335	703-693-6795
13	Kenn Mathison	Tron	202-622-5504	202-622-0872
14	John Hafey	JOINT STAFF	703-695-8136	703-695-8137
15	Chuck Dennis	OSD/ISA/NSA	703-697-8088	703-693-6795
16	LARRY VETRE	JOINT STAFF	703-614-9908	703-697-0255
17	James Moore	USAID	202-712-9047	
18	Renae Wood	SA/INS	71114	64463
19	Bob Weavers	Tron	703-692-2011	202-692-1999
20	Chris Sporn	FDIC	202-898-6611	202-898-3647
21	BOB FICK	FDIC	202-898-8962	202-898-3715
22	Adam Schlimm	DOE/NN	202-596-4495	202-586-6799
23	Gorman MacDougal	DOE/PA	202-586-4940	202-586-9987
24	KEP HIRST	STATE/T	202-647-0065	
25	KAREN HENDERSON	NSC/OIP	301-415-1771	301-415-2400
26	Sharon Williams	E	202-647-9038	202-647-9763
27	Dani Alecto	State/EB/ATP	202-647-1647	202-647-2302
28	Michael O'Connell	STATE/TM	202-477-1837	202-477-4733

Comments in fax sheets

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L-06



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

October 28, 1998

OFFICE OF THE
GENERAL COUNSEL

MEMORANDUM TO: Chairman Jackson
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield

FROM: Karen D. Cyr *Karen D. Cyr*
General Counsel

SUBJECT: *outside scope* [VETERANS AFFAIRS AND] DEPARTMENT OF AGRICULTURE
FY 1999 APPROPRIATIONS BILLS

The committee reports underlying the FY 1999 Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act (Public Law 105-276), and the FY 1999 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act contained in the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 (Public Law 105-277) contain provisions of interest to the NRC. The VA-HUD legislation addresses EPA cleanup under CERCLA (Superfund) of sites which have been remediated to NRC standards. The Agriculture Appropriations Act addresses sanctions imposed against India and Pakistan for their nuclear detonations.

release

1. VA-HUD Appropriations Act

In the committee report issued by the House Appropriations Committee, H.R. Rep. No. 105-610 at 72-73 (July 9, 1998), the Committee asserted:

It has come to the Committee's attention that, despite Congressional direction to the contrary, the Agency [EPA] continues to move toward reversal of its long-standing policy of deferring to the Nuclear Regulatory Commission (NRC) for cleanup of NRC licensed sites. In the past, EPA has not applied cleanup requirements to NRC licensed facilities or placed sites which are being remediated under NRC procedures in the NPL [National Priorities List]. The Committee remains satisfied that the NRC has and will continue to remediate sites to a level that fully protects the public health and safety, and believes that reversing this policy is unwarranted, contrary to the requirements of Executive Order 12866, and not a good use of public or private funds. EPA is directed to continue its long-standing policy on this matter with the NRC and is further directed to spend no funds to enforce cleanup requirements at sites being remediated under regulatory requirements enforced through the NRC licensing procedure.

superfund

CONTACT: Trip Rothschild, OGC
(301) 415-1611

B/11

(The "Congressional direction to the contrary" referred to above is a similarly worded directive contained in the House Appropriations Committee's report on the FY 1998 VA-HUD Appropriations bill, H.R. Rep. No. 105-175 at 68 (July 11, 1997)).

When the FY 1999 bill was brought to the House floor, Representative Henry Waxman (D-Ca) objected to this language in the committee report and offered an amendment to the text of the bill which would have explicitly provided that any limitations on the use of funds in this Act by EPA shall not apply, among other things, to "cleanup requirements for facilities licensed by the Nuclear Regulatory Commission." The House rejected the amendment by a vote of 243-176. (144 Cong. Rec. H6244-H6257 (July 23, 1998).

On the Senate side, the Appropriations Committee did not address the issue in either the text of its proposed appropriations bill or in the accompanying committee report (S. Rep. No. 105-216 (1998).

The Conference Committee did not address the issue in its report (H.R. Conf. Rep. No. 105-769 (October 5, 1998). However, it included a statement that report language included by the House in H. R. Rep No. 105-610, which is not changed by the report of the Senate or the conference, is approved by the committee of conference. It further asserted that the language contained in H. Rep 105-610 should be complied with unless specifically addressed to the contrary in the conference committee report or the Statement of Managers. H.R. Conf. Rep. No. 105-769 at 231.

Language contained in congressional committee reports is obviously not legally binding, but it is equally clear that EPA's Appropriations Committees have directed EPA not to utilize appropriated funds for FY 1999 to remediate under Superfund NRC regulated sites that have been cleaned up in compliance with NRC's regulatory requirements.

2. Agriculture Appropriations Act

Title IX of this Act, the "India-Pakistan Relief Act of 1998", authorizes the President to waive for a period not to exceed one year following enactment of the legislation the application of any sanction or portion thereof contained in sections 101 or 102 of the Arms Export Control Act, section 602E(e) of the Foreign Assistance Act of 1961, or section (2)(b)(4) of the Export Import Bank Act of 1945. Before exercising this authority the President is to consult with appropriate congressional committees. Congress also required that not later than 30 days prior to the expiration of the one-year period, the Secretary of State is to submit a report to these congressional committees on economic and national security developments in India and Pakistan.

The sanctions that Congress authorized the President to waive pertain to the provision of military or economic assistance. Even if the President were to issue a waiver covering some or

Oct 1998

all of the sanctions imposed under the statutes cited, pursuant to the Atomic Energy Act, neither India nor Pakistan are currently eligible to receive exports from the United States of source material, special nuclear material, nuclear facilities or nuclear facility components.

cc: EDO
IP
NMSS
SECY
OCA
OPA
OIG

For:

Joe Churchla wants you to call him.

Asst. Secretary of Export Admin., DCI,

Roger Mayak, will be testing

on the Will sometime this week.

you need to get ~~something~~ done

background Q+A regarding

NRC's general license for items

authorized for export = to India

and Pakistan.

His telephone No. 202-482-4188
No. 202-482-4145
Fax

Billy

B/12

Monday

11:01am

3-8-99

#15

FACSIMILE COVER SHEET

OFFICE OF INTERNATIONAL PROGRAMS
U.S. Nuclear Regulatory Commission
Washington, DC 20555

INTERNATIONAL PROGRAMS FAX: 301/415-2395

Date: 3/10

Page 1 of 2

To: Joe Churchla

Fax No.: 202-482-4145

From:
Ronald D. Hauber
Director, Nonproliferation, Exports
and Multilateral Relations

Telephone:
301/415-2344

Text of Message:

Here is a mini-brief I prepared on the issue of
NRC general-licensed exports to India & Pakistan.



**UNITED STATES
NUCLEAR REGULATORY COMMISSION**
WASHINGTON, D.C. 20555-0001

June 18, 1998

**FACT SHEET
IMPACT OF INDIA AND PAKISTAN SANCTIONS**

The Nuclear Regulatory Commission (NRC) is responsible for licensing exports of nuclear facilities, major critical components, nuclear materials and related commodities under the 1954 Atomic Energy Act. Under the terms of the Nuclear Non-Proliferation Act of 1978, which amended the Atomic Energy Act, the NRC has not licensed exports of nuclear equipment, reactor fuel or other materials of significance to the nuclear programs in India or Pakistan since 1980, in light of the refusal by both countries to adopt full-scope safeguards under the International Atomic Energy Agency, and because the U.S. has not entered into the required Agreement for Peaceful Cooperation with either country.

In the mid-90s, the NRC reached agreement with its counterpart regulatory agency in India, the Atomic Energy Regulatory Board, to pursue three reciprocal nuclear safety projects in fire safety, symptom-based emergency procedures, and design issues, based on safety information that is in the public domain. No implementation of any of these projects had begun prior to India's nuclear tests in early May. Immediately following those tests, all NRC discussions with India were suspended.

No nuclear safety cooperation with India will proceed unless an interagency decision is made that such cooperation is regarded as essential to prevent or correct a radiological hazard posing a significant risk to public health and safety which cannot realistically be met by other means.

There has been no parallel nuclear safety initiative undertaken with Pakistan.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 18, 1998

If asked:

Question: What is meant by materials "of significance to the nuclear programs of India and Pakistan?"

Answer:

We exclude specific forms and quantities of materials which are not subject to international safeguards regimes and have been determined by the Nuclear Regulatory Commission, in formal consultation with the Executive Branch agencies, as not being useful in the production of nuclear materials or nuclear explosive devices. Some such materials are allowed to be exported to India and Pakistan within the limits specified for "restricted destinations" in the general export license provisions of NRC's regulations.

For example, U.S. oil exploration and service companies operating in India and Pakistan have used this authority to export well-logging materials to those operations. Shipments of radioactive isotopes for medical diagnostic or therapeutic procedures would be another example of allowable exports.

In addition, one U.S. company holds a specific NRC license to export a uranium-containing catalyst to acrylonitrile¹ production plants in various countries, including, if built, a prospective plant in India. The U.S. company has proposed to remove India from its license in light of India's nuclear tests.

¹Acrylonitrile is a colorless, liquid organic compound used in the manufacture of acrylic rubber and fibers.

GUIDELINES ON USG INTERACTON WITH INDIA AND PAKISTAN

This memorandum provides guidance for implementing United States Government policy with regard to our relationship with India and with Pakistan. Our policy objective continues to be the maintenance of peace and security in South Asia. The Indian and Pakistani nuclear test have challenged international non-proliferation objectives and endangered regional security in a way that compels us to act to defuse the situation and demonstrate the costs of nuclear proliferation.

The President has invoked sanctions against India and Pakistan under the 'Glenn Amendment' of the Arms Export Control Act and other relevant legislative authorities. As a policy matter, we must not conduct 'business as usual' in those areas not proscribed by these sanctions. Consequently, the following guidelines shall be observed by all U.S. Government Departments and Agencies, until further notice:

1. Any activity, program, or training that contributes in any way to India or Pakistan's nuclear or missile capabilities shall be canceled. Examples of such activities include:
 - a. all DOE and National Laboratory financed activities (except for humanitarian assistance) with Indian and Pakistani government entities and all visits involving Indian and Pakistani foreign nationals from named nuclear institutes or other entities;
 - b. participation in conferences in India or Pakistan, or invitations to officials of such governments to conferences here, addressing nuclear or missile subjects other than embassy participation for purposes of reporting, unless specifically approved by the Department of State; and
 - c. nuclear safety cooperation by the NRC: unless there is interagency agreement that such cooperation is essential in order to prevent or correct a radiological hazard posing a significant risk to public health and safety which cannot realistically be met by other means.

2. Activities that contribute to either countries' conventional capabilities shall be subject to review by the Department of State bearing in mind (1) the potential value of some limited engagement with the militaries of both countries directed at influencing the direction of their nuclear and missile programs, and promoting regional confidence building measures, and (2) the need to avoid high profile activities that signal 'business as usual' to the larger public and the international community. Examples of such activities include:

B/13

- a. training programs and personnel exchanges (i.e., PME) not prohibited by the Glenn Amendment will be subject to a case-by-case review by the Department of State in consultation with the Department of Defense;
 - b. contacts with senior military officers of either country shall be consistent with the guidelines outlined in paragraphs below;
 - c. combined military exercises and ship visits shall be subject to review with a presumption that high profile exercises and ship visits will be denied.
3. No AS level or above visits to India or Pakistan shall take place without senior State Department review and approval. Normal diplomatic and professional contacts below the AS or equivalent level are allowed during the period. Similarly, diplomatic and professional contacts with Indian and Pakistani military officers and MOD civilians below the DAS level are allowed.
 4. Participation in cultural or social events sponsored or hosted by Indian or Pakistani officials at the ambassadorial and AS level and above shall be minimized.
 5. Interactions with Indian and Pakistani officials at international meetings/ organizations shall be limited to that necessary for the conduct of official business.
 6. There should be no trade promotion in India or Pakistan for defense activities or proscribed dual-use items.

Questions regarding the interpretation or application of the foregoing should be addressed to the South Asian Bureau at the Department of State.