

BUREAU OF OCEANS AND INTERNATIONAL  
ENVIRONMENTAL AND SCIENTIFIC AFFAIRS

January 30, 1979

Mr. James R. Shea  
Director  
Office of International Programs  
United States Nuclear Regulatory Commission  
Washington, DC 20555

Dear Mr. Shea:

The Executive Branch has reviewed the proposed general license for the export of minor quantities of nuclear material transmitted under cover of your November 29, 1978 letter and concurs in the issuance of the general license. The Executive Branch believes that materials covered by the proposed general license belong to a category which would not be inimical to the common defense and security because the category lacks significance for nuclear explosive purposes.

The NRC staff analysis interprets the NNPA to require a finding that such exports meet the criteria in Section 127. It is our view the better interpretation is that the law does not require such a finding. Section 126 a.(1) includes a special provision to allow exports within categories that are not significant for nuclear explosive purposes, in order, in our view, to avoid the need for further country-specific analysis. The criteria in Section 127 were intended to apply to exports of potential significance from a non-proliferation perspective and seem to call for country-specific analysis, based on country-specific assurance and information.

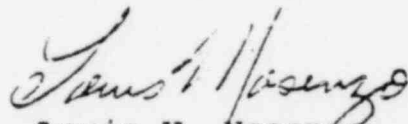
We recognize that there is no provision in the law that expressly authorizes the issuance of such a general license without a finding under Section 126 a.(2) that the export criteria in Section 127, or their equivalent, are met. We also believe the NRC staff analysis of how these criteria are met is very good. However, from a policy standpoint, we have some concern about adopting the position that Section 127 must apply. There may be other "categories" under Section 126 a.(1) which we agree lack significance for nuclear explosive purposes and exports in which we agree would not be inimical to the common

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defense and security where it is not possible to provide a convincing argument that the criteria in Section 127 are met. This may be because the criteria are difficult to apply on a global instead of on a country-specific basis. Yet to refuse to permit a general license and instead to require case-by-case country-specific analysis although the category of exports is not of non-proliferation significance would be a misallocation of our efforts and resources.

We, therefore, suggest that the general license be issued on the basis that "any export in the category to which the proposed export belongs would not be inimical to the common defense and security because it lacks significance for nuclear explosive purposes". If, in view of the ambiguity in the law, the Commission does not consider this prudent, we concur in the substance of the NRC staff analysis of how the Section 127 criteria are met, but suggest that this analysis be explained in such a way that it does not prejudice its ability to conclude in the future that such findings are not legally required.

Sincerely,



Louis V. Nosenzo  
Deputy Assistant Secretary