

March 4, 1998

Secy-98-039

FOR: The Commissioners

FROM: L. Joseph Callan /s/  
Executive Director for Operations

SUBJECT: REQUEST BY OREGON TO RELINQUISH AUTHORITY FOR SEALED  
SOURCE AND DEVICE EVALUATION AND APPROVAL

PURPOSE:

To obtain Commission approval to accept relinquishment of sealed source and device (SS&D) evaluation and approval authority from the Agreement State of Oregon, effective April 1, 1998.

BACKGROUND:

In Staff Requirements Memorandum (SRM) dated June 30, 1995, in response to SECY-95-136, "Options to Improve and Standardize the Evaluation and Approval of Sealed Sources and Devices Manufactured in Agreement States," the Commission approved a process for the voluntary return of the SS&D evaluation authority from Agreement States. The process indicates that a letter from the Governor of the State requesting relinquishment of the SS&D evaluation and approval authority and assumption of the authority by the NRC should be submitted to the Chairman. The request from the Governor would serve as the basis of NRC action and no detailed supporting basis or rationale is required for relinquishment of SS&D evaluation and approval authority and assumption by the NRC.

In an SRM dated April 10, 1996, in response to SECY-96-050, "To Seek Authorization to Accept Relinquishment of Sealed Source and Device Evaluation Authority from the Agreement States of Iowa, North Dakota, and Utah," the Commission approved the assumption of regulatory authority by NRC for SS&D evaluations in these three States.

Contact: James H. Myers, OSP  
415-2328

In a letter dated September 8, 1997, from New Mexico Governor Gary E. Johnson to Chairman Jackson, the State requested relinquishment of SS&D evaluation authority. The NRC acknowledged New Mexico's request in a letter dated September 23, 1997, to Governor Johnson from Richard L. Bangart, Director, Office of State Programs. After the Commission's approval, the NRC accepted responsibility for the New Mexico's SS&D evaluation effective January 1, 1998.

Following a process established in SECY-95-136, the staff is providing the letter from the Governor of Oregon; a proposed response to Governor Kitzhaber from Chairman Jackson, accepting the Governor's request; and a proposed notice to be published in the Federal Register announcing NRC's intention to reassert SS&D evaluation authority in the State of Oregon.

DISCUSSION:

The Governor of Oregon, John A. Kitzhaber, M.D., in his December 8, 1997, letter to Chairman Jackson, Attachment 1, indicated that the State would like to relinquish its authority to perform SS&D evaluations. The Governor indicated that Oregon has had few requests for SS&D evaluations. Governor Kitzhaber stated that the State could not justify the resources required to maintain an SS&D program while maintaining a high quality radioactive materials program. The Agency acknowledged Governor Kitzhaber's request on January 15, 1998, outlining the process for initiating a return of the SS&D authority to the NRC.

The staff has drafted a proposed response to Governor Kitzhaber from Chairman Jackson, accepting the State's request, Attachment 2. In accordance with SECY-95-136, an effective date is proposed, April 1, 1998, for the relinquishment of SS&D evaluation and approval authority by the State of Oregon and assumption by the NRC. The staff believes this proposed date will provide for an orderly transfer of authority.

The staff also has drafted a proposed notice to be published in the Federal Register announcing NRC's intention to reassert SS&D evaluation authority in Oregon, Attachment 3. The effective date of April 1, 1998, is identified in that notice.

RESOURCES:

The State of Oregon became an Agreement State on July 1, 1965. Since becoming an Agreement State, the staff notes that the State has submitted two SS&D sheets to the national registry. The most recent sheet was issued on October 1, 1997. Since only two SS&D evaluations were conducted by Oregon in the past and no recent applications have been received by the State, NRC's resumption of regulatory authority will have minimal resource impacts at this time.

RECOMMENDATIONS:

The staff recommends that the Commission approve the letter to the Governor of Oregon and the proposed Federal Register notice.

NOTE:

Upon Commission approval of the above actions, the staff will recommend to the Oregon Agreement program that they provide public notice of this action to their licensees.

COORDINATION:

The Office of General Counsel has no legal objection to this paper. Additionally, the Office of the Chief Financial Officer has reviewed this Commission Paper for resource implications and has no objections.

L. Joseph Callan  
Executive Director  
for Operations

- Attachments: 1. Letter from Governor of Oregon  
2. Proposed Response to Governor of Oregon  
3. Proposed Federal Register Notice

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**\*See previous concurrence.**

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The Commissioners

The Honorable John A. Kitzhaber, M.D.  
Governor of Oregon  
State Capitol  
Salem, Oregon 97310-0370

Dear Governor Kitzhaber

In response to your December 8, 1997 request to relinquish Oregon's authority to evaluate and approve sealed source and device (SS&D) applications, I asked the Nuclear Regulatory Commission staff to prepare a paper on the issue so that the Commission could act on your request. After reviewing your proposal and the staff's analysis, the Commission has decided to reassume regulatory authority for SS&D evaluations and approvals within the State of Oregon, effective April 1, 1998. For your information, I have enclosed a copy of the Federal Register notice announcing this change. Oregon will retain authority to regulate the manufacture and use of sealed sources and devices within the State in accordance with its Section 274b Agreement with the NRC.

Your staff may contact Richard L. Bangart, Director, Office of State Programs, (301) 415-3340, if they have any questions regarding this matter.

Sincerely,

Shirley Ann Jackson

Enclosure:  
As stated

cc: Ray Paris, Manager  
Radiation Protection Services  
Oregon State Health Division

NUCLEAR REGULATORY COMMISSION

State of Oregon Relinquishment of Sealed Source  
and Device Evaluation and Approval Authority and  
Reassumption by the Commission

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Reassumption of Sealed Source and Device Evaluation and Approval Authority from the State of Oregon.

**SUMMARY:** Notice is hereby given that effective April 1, 1998, the Nuclear Regulatory Commission will reassume regulatory authority for sealed source and device evaluations and approvals in the Agreement State of Oregon in response to a request from the Governor of the State of Oregon to relinquish this authority.

**EFFECTIVE DATE:** April 1, 1998.

**FOR FURTHER INFORMATION CONTACT:** Mr. James H. Myers, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-2328, Internet: JHM@NRC.GOV.

**SUPPLEMENTARY INFORMATION:** Currently, the State of Oregon has an Agreement with the Nuclear Regulatory Commission (NRC) which grants the State authority to regulate specific categories of radioactive materials formerly regulated by the NRC. This Agreement was entered into on July 1, 1965, pursuant to Section 274b of the Atomic Energy Act of 1954, as amended.

Recently, the NRC received a letter from Oregon Governor John A. Kitzhaber, M.D., (December 8, 1997) requesting relinquishment of the State's authority to evaluate and approve sealed source and devices, and assumption of this authority by NRC. The requested action would involve reassertion of regulatory authority by NRC over activities currently regulated by Oregon pursuant to its Agreement with NRC.

The Governor of Oregon noted there are two manufacturers in the State and there has been one sealed source and device evaluation conducted in 1997. Governor Kitzhaber indicated that it would not be cost effective to fund and maintain staff to conduct sealed source and device evaluations.

The Commission has agreed to the request and has notified Oregon that effective April 1, 1998, the NRC will reassume authority to evaluate and approve sealed source and device applications within the State of Oregon. The State of Oregon will retain authority to regulate the manufacture and use of sealed sources and devices within the State in accordance with its Section 274b Agreement with the NRC.

Dated at Rockville, Maryland this \_\_\_\_\_ day of \_\_\_\_\_, 1998

For the Nuclear Regulatory Commission.

John C. Hoyle,  
Secretary of the Commission.