

November 4, 1997

FOR: The Commissioners

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

SUBJECT: REQUEST BY NEW MEXICO 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 New Mexico, effective January 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.

In a letter dated September 8, 1997, from New Mexico Governor Gary E. Johnson to Chairman Jackson (Attachment 1), the State requested relinquishment of SS&D evaluation authority. The NRC acknowledged the New Mexico request in letter dated September 23, 1997, to Governor

Johnson from Richard L. Bangart, Director, Office of State Programs. Following the process established in SECY-95-136, the staff is providing the letter from the Governor of New Mexico; a proposed response to Governor Johnson 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 New Mexico.

DISCUSSION:

The Governor of New Mexico, Gary E. Johnson, in his September 8, 1997, letter to Chairman Jackson, indicated that the State would like to relinquish its authority to perform SS&D evaluations. The Governor indicated that New Mexico has two manufacturers of devices and the last SS&D evaluation was performed by the State in 1988. Governor Johnson stated that, based upon this information, it would not be cost effective to fund and maintain trained staff to conduct SS&D evaluations. In addition, the Governor indicated that New Mexico would retain authority to license manufacturers.

The staff has drafted a proposed response to Governor Johnson from Chairman Jackson, accepting the State's request, Attachment 2. In accordance with SECY-95-136, an effective date is proposed, January 1, 1998, for the relinquishment of SS&D evaluation and approval authority by the State of New Mexico 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 New Mexico, Attachment 3. The effective date of January 1, 1998, is identified in that notice.

RESOURCES:

The State of New Mexico became an Agreement State on May 1, 1974. Since becoming an Agreement State, the staff notes that the State has submitted 16 SS&D sheets to the national registry. These sheets were issued during the period January 1, 1975, to March 1, 1988. Since only a small number of SS&D evaluations were conducted by New Mexico in the past and no recent applications have been received, NRC resumption of regulatory authority will have essentially no resource impacts at this time.

RECOMMENDATIONS:

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

NOTE:

Upon Commission approval of the above actions, the staff will recommend to the New Mexico 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

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| Contact: | Cardelia H. Maupin, OSP 415-2312 |
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Attachments: 1. Letter from Governor of New Mexico
 2. Proposed Response to Governor of New Mexico
 3. Proposed Federal Register Notice

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 3. Proposed Federal Register Notice

cc: SECY
 OCA
 OGC
 OPA
 CFO
 CIO
 Distribution:
 Dir R/F DCD (SPX2)
 EDO R/F (G970679)PDR (NO)
 SDrogittis
 CHackney
 STreby
 New Mexico File

The Honorable Gary E. Johnson
Governor of New Mexico
Santa Fe, NM 87503
Dear Governor Johnson:

In response to your September 8, 1997, request to relinquish New Mexico'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 New Mexico, effective January 1, 1998. For your information, I have enclosed a copy of the Federal Register notice announcing this change. New Mexico 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, at (301) 415-3340, if they have any questions regarding this matter.

Sincerely,
Shirley Ann Jackson

Enclosure: As stated

cc: Benito Garcia, Chief
Bureau of Hazardous and Radioactive Materials
New Mexico Department of Environment

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

State of New Mexico 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 New Mexico.

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

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Cardelia H. Maupin, Senior Project Manager, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-2312, Internet: CHM@NRC.GOV.

SUPPLEMENTARY INFORMATION: Currently, the State of New Mexico 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 May 1, 1974, pursuant to Section 274b of the Atomic Energy Act of 1954, as amended.

Recently, the NRC received a letter from New Mexico Governor Gary E. Johnson (September 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 New Mexico pursuant to its Agreement with NRC.

The Governor of New Mexico noted there are two manufacturers in the State and there has been no sealed source and device evaluations conducted since 1988. Governor Johnson 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 New Mexico that effective January 1, 1998, the NRC will reassume authority to evaluate and approve sealed source and device applications within the State of New Mexico. The State of New Mexico 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 _____, 1997

For the Nuclear Regulatory Commission.

John C. Hoyle,
Secretary of the Commission.