

July 7, 1997

SECY-97-139

FOR: The Commissioners

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

SUBJECT: PROPOSED RULE: LICENSE APPLICATIONS FOR CERTAIN ITEMS
CONTAINING BYPRODUCT MATERIAL (10 CFR PART 32)

PURPOSE:

To obtain the Commission's approval for publication of a proposed rule amending Part 32.

BACKGROUND:

By negative consent, the Commission approved a rulemaking plan to amend the prototype testing requirements for hands, dials, and pointers containing tritium (used primarily in timepieces) contained in Part 32. This rulemaking plan was submitted to the Commission on February 4, 1997, SECY-97-028, "Rulemaking Plan for Revision of Prototype Testing Requirements for Hands, Dials, and Pointers Using Tritium: Response to PRM-32-4 to Put Timepieces with Gaseous Tritium Light Sources on the Same Regulatory Basis as Timepieces with Luminous Paint." The proposed rule responds to a petition received from mb-microtec, Inc., docketed on August 9, 1993, that requested timepieces containing gaseous tritium light sources (GTLS) be regulated on the same basis as timepieces containing tritium paint in regard to their distribution.

DISCUSSION:

In response to the petitioner's request Part 32 would be amended to remove specific prototype testing requirements for hands, dials, and pointers using tritium from § 32.14(d)(1) and to modify but not change the intent of the existing performance standard in § 32.14(d)(1). Guidance on

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meeting the standard will be provided in an appendix to draft NUREG-1562, “Standard Review Plan for Applications for Licenses to Distribute Byproduct Material to Persons Exempt from the Requirements for an NRC License.” This guidance will be available for use by licensees at the time the rule becomes final. These modifications will provide increased flexibility to licensees, and will accommodate any future developments in technology and design of tritium illuminated timepieces. The guidance will not be incorporated into a regulatory guide, as the staff had previously stated, since NMSS plans to use the NUREG series to provide guidance to licensees on the preparation of license applications.

Currently, NRC requires licensees who commercially distribute gaseous tritium light sources to apply for a license in accordance with § 32.22. To distribute timepieces under this provision an applicant must submit detailed analyses of the product. The proposed amendment would simplify the licensing process for distributors of timepieces containing gaseous tritium light sources (GTLS) that contain no more than 25 mCi of tritium by allowing them to apply for a distribution license in accordance with § 32.14, which would only require the applicant to demonstrate that a prototype would meet the performance standard in § 32.14(d)(1). Thus, timepieces using GTLSs containing small quantities of tritium would be distributed and used in accordance with the same sections of the regulations as timepieces using luminous tritium paint, that is, § 30.15(a)(1). Vendors who desire to continue marketing self-luminous watches containing greater than 25 millicuries of tritium could continue to do so in accordance with the provisions of § 32.22.

COORDINATION:

The Office of the General Counsel has no legal objection to the proposed rulemaking. The Office of the Chief Financial Officer has no objection to the resource estimates associated with the rulemaking. The Office of the Chief Information Officer concurs that there will be no information technology impacts.

RECOMMENDATION:

That the Commission:

1. Approve for publication in the Federal Register the proposed amendments to 10 CFR Part 32 (Enclosure 1).
2. Note:
 - a. That the proposed amendments will be published in the Federal Register allowing 75 days for public comment.
 - b. That the Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification and the reasons for it, as required by the

Regulatory Flexibility Act, 5 U.S.C. 605(b).

- c. A draft regulatory analysis has been prepared for this rulemaking (Enclosure 2).

- d. An Environmental Assessment has not been prepared for this rulemaking. The NRC has determined that the proposed rule is the type of action described as a categorical exclusion in § 51.22(c)(2).
- e. The appropriate Congressional committees will be informed of this action (Enclosure 3).
- f. The proposed rule modifies existing information collection requirements that are subject to review by OMB. Upon approval, request for review and clearance will be sent to OMB.
- g. That a public announcement will be issued by the Office of Public Affairs when the proposed rulemaking is filed with the Office of the Federal Register (Enclosure 4).
- h. That resources to complete and implement this rulemaking are included in the current budget.

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Enclosures: As stated (4)

