

February 16, 1998

COMMISSION VOTING RECORD

DECISION ITEM: SECY-98-261

TITLE: POLICY CONCERNING BUNDLING OF EXEMPT QUANTITIES

The Commission (with Commissioners Dicus, Diaz, McGaffigan, and Merrifield agreeing) approved the subject paper as recorded in the Staff Requirements Memorandum (SRM) of February 16, 1998. Chairman Jackson disapproved the staff's recommendation in this paper.

This Record contains a summary of voting on this matter together with the individual vote sheets, views and comments of the Commissioners, and the SRM of February 16, 1998.

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Annette L. Vietti-Cook  
Secretary of the Commission

Attachments: 1. Voting Summary  
2. Commissioner Vote Sheets  
3. Final SRM

cc: Chairman Jackson  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
OGC  
EDO  
PDR  
DCS

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VOTING SUMMARY - SECY-98-261

RECORDED VOTES

	<b>APRVD</b>	<b>DISAPRVD</b>	<b>ABSTAIN</b>	<b>NOT PARTICIP</b>	<b>COMMENTS</b>	<b>DATE</b>
CHRM. JACKSON		X			X	12/1/98
COMR. DICUS	X				X	11/23/98
COMR. DIAZ	X				X	12/10/98
COMR. McGAFFIGAN	X				X	12/1/98
COMR. MERRIFIELD	X				X	11/23/98

COMMENT RESOLUTION

In their vote sheets, Commissioners Dicus, Diaz, McGaffigan, and Merrifield approved the staff's recommendation and provided some additional comments. Chairman Jackson disapproved the staff's recommendation because she believes the use of a Generic Letter is inappropriate. She would prefer that the staff finalize the draft report entitled "Systematic Radiological Assessment of Exemptions for Source and Byproduct Materials," and make recommendations to the Commission for changes to the regulations based upon the risk of exempted activities. Subsequently, the comments of the

Commission were incorporated into the guidance to staff as reflected in the SRM issued on February 16, 1998.

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## Commissioner Comments on [SECY-98-261](#)

### **Chairman Jackson's Comments on SECY 98-261**

I disapprove the staff's proposal to issue the generic letter describing the revised NMSS decision regarding the bundling of exempt quantity byproduct material. The use of a generic letter (GL) to effect rulemaking is inappropriate.

The staff's concerns over the increased bundling of these exempt quantities of byproduct material is a logical and valid concern. However, the staff's proposal to try to limit the number of sources that can be bundled does not appear to have been based on a proper risk assessment, nor does it appear that it would be effective. Non-licensees could manufacture similar devices independent of NRC's approval process. The requirements set forth in the proposed GL would not be binding upon these non-licensee manufacturers, nor would the existence of the GL necessarily be known to them or their clients. There are also unacceptable possible consequences of the definition of bundling in this GL, such as the scenario of a physics department being required to keep each of its exempt sources in a separate container resulting in the possible loss of accountability of the sources, or for the scenario of a reseller of smoke detectors, who, under the proposed interpretation, would be required to store each device in a separate box or bin.

Therefore, rather than approach this problem in a piecemeal fashion without proper consideration of the risk or impact of the regulatory action, I recommend that the staff finalize the Draft Report entitled "Systematic Radiological Assessment of Exemptions for Source and Byproduct Materials." Following completion of this study, the staff should be able to make some reasonable and informed recommendations to the Commission for changes to the regulations based upon the risk of the exempted activities.

### **Commissioner Dicus Comments on SECY-98-261**

I approve staff's proposed generic letter describing a revised NMSS decision regarding the bundling of exempt quantity byproduct material subject to the following changes. I believe that the last paragraph on page 2 should be revised because it focuses solely on radiation safety and does not address protection of property which is a major concern of the scrap metal industry. In addition, the Joint Agreement State-NRC working group went to great lengths to raise this issue to a level of Commission concern comparable to radiation safety. For these reasons, I suggest rewording the paragraph as follows (changes are in parentheses).

At this time, devices, already in use, having multiple exempt quantities of byproduct material "not exceeding 10 in number per device," may continue to be used. NRC does not plan to take any action "at this time" regarding these devices or users unless a radiological safety hazard is identified. "However, since, as explained below, NRC is reviewing this matter, persons possessing such devices should maintain control and accounting of these devices. To this end, it is good practice to clearly label the devices with radioactive materials warning labels bearing the standard radiation warning symbol and standard magenta (or purple) and yellow colors. Additionally, it is preferable to not dispose of devices containing sources through ordinary commercial waste disposal or metal recycling channels because the presence of radioactive material is of concern to waste disposal facility operators and the metal recycling industry. If devices containing sources are no longer needed, the supplier should be consulted for advice regarding disposition.

NRC plans to further evaluate the risks associated with these devices. Following this evaluation, NRC will consider appropriate steps, including rulemaking, to clarify the regulatory status of these devices consistent with the protection of the public health and safety and of property." It is anticipated that the "evaluation" and rulemaking process will take 2 to 3 years.

Staff should request distributors of these devices to provide copies of the generic letter to past and future customers. Copies of the generic letter should be provided to the appropriate scrap metal industry trade organizations.

### **Commissioner Diaz comments on SECY-98-261**

I agree with the thrust of Commissioner Dicus's comments and suggest clarifying that the Commission's position is based on protection of public health and safety, with protection of property as a beneficial byproduct of its decision. When presented with options that are equally protective of public health and safety, the Commission should, being mindful of costs, choose the least costly option, e.g., as the Commission did in establishing decommissioning criteria of the License Termination Rule. Therefore, I believe that the paragraphs proposed by Commissioner Dicus, with the insertion of "with due consideration to property" in the penultimate sentence of the second paragraph, are appropriate.

### **Commissioner McGaffigan's comments on SECY-98-261**

I concur with Commissioner Dicus' comments.

### **Commissioner Merrifield's comments on SECY-98-261**

I concur with the comments of Commissioner Dicus.