

July 17, 1998

FOR: The Commissioners

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

SUBJECT: PROPOSED GUIDELINES FOR APPENDIX C, "OTHER EVENTS OF INTEREST," TO THE ABNORMAL OCCURRENCE REPORT TO CONGRESS

PURPOSE:

The staff is responding to the Staff Requirements Memorandum (SRM) dated February 6, 1998, on SECY-97-288, "Report to Congress on Abnormal Occurrences (AOs) for Fiscal Year 1997." The SRM directed the staff to "provide a clearly defined set of criteria for events to be included in Appendix C to be used in next year's report." In evaluating alternatives and developing guidelines for Appendix C, the staff developed and provides three options for the Commission's consideration together with the staff's recommendation. The staff seeks Commission direction on this matter.

BACKGROUND:

Section 208 of the Energy Reorganization Act of 1974 (Public Law 93-438), as amended, required the NRC to submit to Congress each quarter a report listing for that period any AOs at or associated with any facility that is licensed or otherwise regulated pursuant to the Atomic Energy Act of 1954, as amended. An AO is defined in Section 208 as an unscheduled incident or event that the NRC determines to be significant from the standpoint of public health or safety.

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Appendix C of the AO report, "Other Events of Interest," was established by the Commission in 1976. In the SRM dated December 2, 1976, on SECY-76-471, "Abnormal Occurrence Criteria," the Commission directed the staff as follows:

Further consideration should be given to the inclusion in the report of events which, though not determined by NRC to be of public health significance, may be perceived as such by the public. These events might be noted in a separate section of the report, together with a full description of the basis for the NRC determination that they are not abnormal occurrences.

The Federal Reports Elimination and Sunset Act of 1995 (Public Law 104-66) allowed the NRC to publish the AO report on an annual basis.

In 1995, in SECY-95-244, "Revised Abnormal Occurrence Reporting Criteria and Streamlining the Abnormal Occurrence Report," the staff recommended to the Commission that the AO process be streamlined to include deletion of "Other Events of Interest." The SRM on SECY-95-244, dated November 27, 1995, stated the following:

...the Appendix listing 'Other Events of Interest' that do not meet the criteria for reporting as Abnormal Occurrences should be retained. It should include items that may possibly be perceived by the public to be of health or safety significance, but did not, in fact, involve a major reduction in the level of protection provided for public health or safety. An example is an event where upon final evaluation by an NRC Incident Investigation Team or an Agreement State equivalent response a determination was made that the event did not meet the criteria for an abnormal occurrence.

In 1996, NRC published in the *Federal Register* (January 9, 1996; 61 FR 661) for public comment the proposed AO policy statement that included the proposed AOs and "Other Events of Interest" using the guideline provided by the Commission in the SRM on SECY-95-244. Public comments received on "Other Events of Interest" suggested that inclusion of Appendix C be discontinued because a) there is no legal justification for the development of the Appendix; b) the NRC does not have a fair mechanism for ascertaining public perception; and c) events may be perceived as AOs and give the appearance of safety significance when no such finding was assigned to them. The AO policy statement was published as final in the *Federal Register* in December 19, 1996, and included the guideline of "Other Events of Interest" as listed in the SRM on SECY-95-244.

In 1997, the staff submitted the first annual AO report, SECY-97-288, using the revised AO criteria and the guideline for "Other Events of interest," which included the proposed AOs for fiscal year 1997. Following consideration of this report, the Commission indicated that the guideline for including events in Appendix C was not clear and events other than Incident Investigation Team (IIT)⁽¹⁾ cases, such as loss of control of licensed materials events, could be included in the Appendix. Therefore, in the SRM on SECY-97-288, dated February 6, 1998, the Commission directed the staff to include in the fiscal year 1997 AO report a list of some events involving loss of control of materials. The SRM further stated that this list was not all inclusive nor was there any intention to routinely provide examples of these events in the future; however, the staff should clarify the criteria for Appendix C to be used in the next year's AO report.

DISCUSSION:

The staff has evaluated different approaches for selecting a guideline for "Other Events of Interest" and has developed the following three options for the Commission's consideration: (a) Option 1 - Delete Appendix C, "Other Events of Interest"; (b) Option 2 - Include events for which an Accident Review Group (ARG)⁽²⁾, an IIT, or an equivalent Agreement State investigation was established; or (c) Option 3 - Include events for which an ARG, an IIT, or an equivalent Agreement State investigation was established, or a Federal Radiological Emergency Response Plan (FRERP)⁽³⁾ response occurred. The staff's

preferred option is Option 1. Each option is discussed below.

The staff believes that the Commission's direction on the proposed options should not be published in the *Federal Register* for public comment, since there is no legal requirement to publish minor revisions to NRC policy statements, and because NRC has already received public comments on this subject in 1996.

Proposed Guidelines for Appendix C

Option 1: Delete Appendix C, "Other Events of Interest"

Rationale for Option 1

The staff believes that Congress should continue to be informed of events that may be perceived as significant by the public. However, the staff feels that this is being accomplished today by the Office of Congressional Affairs (OCA), as well as by electronic communication.

In 1976, since the methodology for making NRC event information available was limited, the AO report was an appropriate tool to report "Other Events of Interest." At that time, the means of NRC information dissemination included mainly *Federal Register* notices and the hard copies of reports placed in the NRC's Public Document Room (PDR). Today, the NRC provides information to Congress by a more timely and practical method than the section "Other Events of Interest," which is published annually. For example, OCA provides information, to appropriate Congressional committees, on events reported to NRC on a daily basis in the form of Preliminary Notifications of Event or Unusual Occurrence (PNOs) and press releases. In addition, the OCA staff, based on their judgement of what NRC information is significant and could be of interest to Congress, provide telephonic communication to interested members and committees, when such information becomes available to NRC/OCA.

Since 1976, the technology for sharing information has evolved at a rapid rate and has significantly improved NRC event communication. Information received in the NRC Operations Center is available daily as Event Notifications (ENs) on NRC's external web site. Morning Reports (MRs) and PNOs are also made available on a daily basis. Generic communications (GCs), enforcement actions (EAs), and weekly highlights (WH) are made available shortly after they are issued. However, in 1995, when the staff proposed to the Commission the deletion of Appendix C, electronic dissemination of event information was not as widely used.

The use of NRC electronic communications today is consistent with the guidance from the Office of Management and Budget (OMB) that there are other more practical and efficient means for disseminating Federal information. In Circular No. A-130, dated February 8, 1996, OMB encourages Federal agencies to use electronic information dissemination. Specifically, on page 10 of the Circular, OMB states the following:

Electronic Information Dissemination. Agencies shall use electronic media and formats, including public networks, as appropriate, and within budgetary constraints, in order to make government information more easily accessible and useful to the public.

In addition, the AO report to Congress was established to include events of high level of significance. However, Appendix C historically has included events that the NRC determined not to be significant but could be perceived as such by the public. Continuing to report "Other Events of Interest" could lead to Congressional or public misunderstanding regarding which events are truly significant.

Deletion of Appendix C will streamline the AO report and reduce staff effort.

Pros:

- OCA routinely provides to Congress PNOs and press releases on event information reported to the NRC on a daily basis and by telephonic communication of events that may be of immediate interest to Congress. This is a more timely means of information dissemination than the annual "Other Events of Interest."
- The electronic communication of event information provides an efficient method for disseminating information on "Other Events of Interest." Information that may be of interest to Congress is available on the NRC web site.
- Hard copies of PNOs, MRs, ENs, GCs, EAs, WHs, IITs, Augmented Inspection Team (AIT)⁽⁴⁾ reports, and other licensee inspection reports can be found in the NRC's PDR.
- Reporting "Other Events of Interest" is not required by Section 208.
- Deletion of "Other Events of Interest" will reduce the potential misunderstanding concerning safety and risk significance of events.

Cons:

- Information to Congress on events that may possibly be perceived by the public to be of health or safety significance will not be compiled in one report.
- It is difficult to search and identify events of interest on the NRC web site.

Option 2: Include in Appendix C those events for which an ARG, an IIT⁽⁵⁾, or an equivalent Agreement State investigation was established. The guideline for selection of items for "Other Events of Interest" would read as follows:

The Commission may determine that events other than abnormal occurrences (AOs) may be of interest to Congress and should be included in an Appendix to the AO report as "Other Events of Interest." These include events for which an NRC "Accident Review Group," an "Incident Investigation Team," or an Agreement State equivalent investigation was established and for which a determination was made that these events do not meet the criteria for an AO.

Rationale for Option 2:

Pros:

- Information to Congress on events that may possibly be perceived as significant by the public will be compiled in a single report.
- Option 2 provides consistent selection of reactor and non-reactor events based on their potential safety and risk significance using the criteria for an ARG (Management Directive (MD) 8.9, "Accident Investigation") or for an IIT (MD 8.3, "NRC Incident Investigation Procedures").
- An ARG or an IIT response may involve local media coverage and thus the public may think it is of health or safety significance.
- Appendix C will include events of high Congressional interest.

Cons:

- Information on events that may be of interest to Congress is already available in a more timely manner through OCA communication with Congress. Thus, events such as ARGs, IITs, or equivalent Agreement State investigations will be reported to Congress. Also, event information is available electronically through the Internet, in the NRC's PDR, and in the AEOD Annual and NRC Annual Reports.
- Reporting "Other Events of Interest" is not required by Section 208.
- Option 2 will increase the potential misunderstanding concerning safety and risk significance of events.

Option 3: Include in Appendix C events for which an ARG, an IIT, or an equivalent Agreement State investigation was established, or a FRERP⁽⁶⁾ response occurred. The guideline for selection of items for "Other Events of Interest" would read as follows:

The Commission may determine that events other than abnormal occurrences (AOs) may be of interest to Congress and should be included in an Appendix to the AO report as "Other Events of Interest." These include events for which an NRC "Accident Review Group," an "Incident Investigation Team," or an equivalent Agreement State investigation was established, or an incident occurred involving on-scene response of more than one Federal agency (a Federal Radiological Emergency Response Plan response), and for which a determination was made that these events do not meet the criteria for an AO.

Rationale for Option 3:

Pros:

- Information to Congress on events that may possibly be perceived as significant by the public will be compiled in a single report.
- Option 3 provides consistent selection of reactor and non-reactor events based on their potential safety and risk significance using the criteria for an ARG (Management Directive (MD) 8.9, "Accident Investigation") or for an IIT (MD 8.3, "NRC Incident Investigation Procedures"). Decisions regarding response to reactor and materials events under the FRERP are made with consideration of levels of potential public risk or interest.
- A FRERP response often involves local media coverage and thus the public may think it is of health or safety significance.
- Appendix C will include events of high Congressional interest.

Cons:

- Information on events that may be of interest to Congress is already available in a more timely manner through OCA communication with Congress. Thus, events such as ARGs, IITs, or Agreement State investigations, or a FRERP response, will be reported to Congress. Also, information is available electronically through the Internet, in the NRC's PDR, and in the AEOD Annual Report.
- Reporting "Other Events of Interest" is not required by Section 208.
- Option 3 will increase the potential misunderstanding concerning safety and risk significance of events.

In evaluating alternatives and developing guidelines for Appendix C, the staff considered the issue of loss of control of materials as included in the SRM dated February 6, 1998, on SECY-97-288, for the fiscal year 1997 AO report. The staff believes that similar issues about other types of events can be included in Appendix C. The current annual AEOD report includes an evaluation of issues of different categories of materials and reactor events. If such evaluation identifies a significant issue that may represent a major reduction in the public health and safety and if the Commission has decided to retain Appendix C, a concise description of the issue will be proposed to the Commission to be included in Appendix C, in addition to the events that would be listed under options 2 and 3. Because of the time needed to review and evaluate these issues, the write-ups in Appendix C may include issue information

based on the previous fiscal year AEOD annual report evaluation.

Agreement State Comments

The proposed options were sent for comment to all 30 Agreement States, of which 22 States responded. Twenty-one of the States strongly urged the staff to eliminate the reporting of "Other Events of Interest" because event information of licensed material is widely and readily available through the Internet and because there is no statutory basis for reporting these events. One Agreement State supported Option 3.

NRC and Agreement State Resources

The staff has estimated that the NRC's staff effort to identify "Other Events of Interest," based on the proposed options 2 or 3, to coordinate with NRC and Agreement State staff; prepare writeups; and edit, compile, and process for inclusion in the AO report would be nominal (less than 0.5 FTE). The majority of this effort can be reprogrammed within AEOD's existing budget.

The Agreement States, with one exception, commented that if Option 2 or 3 were chosen, it would cause unnecessary expenditure of the already strained resources of the Agreement States in order to identify "Other Events of Interest," prepare writeups, and compile and submit them to the NRC. The Agreement States indicated that they expect to benefit from the deletion of "Other Events of Interest." The staff estimated that the total amount of Agreement State resources on this effort would be on the same order as the NRC estimated resources listed above.

COORDINATION:

The Office of the Chief Financial Officer has reviewed this Commission paper for resource implications and has no objections. The Office of the General Counsel has reviewed the draft report and has no legal objections to its contents.

RECOMMENDATION:

That the Commission approve the staff's preferred Option 1 to delete "Other Events of Interest" because (1) NRC has more timely and efficient means of making event information available, (2) events reported to Congress will be of equivalent safety and risk significance, thereby reducing misunderstandings, and (3) the AO report process would be streamlined and staff effort reduced. The staff also recommends that this proposed change to the AO report to Congress not be published in the *Federal Register* for public comments. Instead, the staff could include a statement about this change in the *Federal Register* notice announcing the fiscal year 1998 AOs.

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Attachment: As stated

Licensee	Incident Investigation Teams	Abnormal Occurrences	Other Events of Interest
Reactor	0	0	0
Nonreactor	1 _a	0	1 _a
Total	1	0	1

a. Ingestion of phosphorus-32 at the Massachusetts Institute of Technology in Cambridge, Massachusetts, on August 19, 1995.

Licensee	FRERP Responses	Abnormal Occurrences	Other Events of Interest
Reactor	0	0	0
Nonreactor	3 _{abc}	1 _a	0
Total	3	1	0

- a. Stolen radiography cameras at Houston of Texas (Larpen Texas), on February 27 to March 5, 1996 (AS 96-1, NUREG-0090, Vol.19, "Report to Congress on Abnormal Occurrences" for fiscal year 1996).
 - b. Stolen radiography camera at Mattingly Testing Service at Billings, Montana, on April 4, 1997.
 - c. Ingestion of tritium gas or liquid from broken exit sign at New Jersey Department of Environmental Protection in Cream Ridge, New Jersey, on May 10, 1997.
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1. An IIT response is an NRC investigation of a significant operational event, such as any radiological, safeguards, or other safety-related operational event at an NRC-licensed facility that poses an actual or a potential hazard to public health and safety, property, or the environment. The IIT reports directly to the NRC's Executive Director for Operations.
2. An ARG performs an investigation of an accident related to any radiological, safeguards, or other safety-related operational event at an NRC-licensed facility that poses a significant hazard to public health or safety or the environment, or involves an event of high interest to the public, the media, Congress, or the Executive Branch. The Commission approves the investigation of an event by an ARG and follow up actions assigned as a result of the investigation.
3. The FRERP establishes an organized and integrated capability for timely, coordinated response by Federal agencies to any emergency with actual potential or perceived radiological consequence. Any response involving more than one Federal agency on scene will be considered a "FRERP response."
4. An AIT inspects events of lesser health and safety or safeguards significance than an IIT. The AIT assesses events in which facts, conditions, circumstances, and probable cause may contribute to the regulatory and technical understanding of a generic safety concern or an important lesson of experience. The AIT reports directly to the appropriate regional administrator.
5. As shown in [Table 1](#) (attached), for fiscal years 1995 through 1997 only one IIT event (materials case) was determined to be an "Other Events of Interest" item for the AO report to Congress.
6. As shown in [Table 2](#) (attached), for fiscal years 1995 through 1997, the NRC coordinated three FRERP responses (materials cases). One of these events met the criteria for an AO and was included in the AO Report to Congress. None of these events was included in Appendix C.