

consensus standards tend to be non-controversial and have already undergone extensive external review and been endorsed by industry. Therefore, while regulatory actions endorsing these voluntary consensus standards must be addressed in a regulatory analysis, it is usually not necessary for the regulatory analysis to address the individual provisions of the voluntary consensus standards. The NRC believes this is appropriate for several reasons: (1) It has been longstanding NRC policy to incorporate later versions of the ASME Code into its regulations, and thus licensees know when receiving their operating licenses that such updating is part of the regulatory process; (2) endorsement of the ASME Code is consistent with the National Technology Transfer and Advancement Act, inasmuch as the NRC has determined that there are sound regulatory reasons for establishing regulatory requirements for design, maintenance, inservice inspection and inservice testing by rulemaking; and (3) these voluntary consensus standards undergo significant external review and discussion before being endorsed by the NRC. However, some aspects of these regulatory actions are backfits which must be addressed and justified individually. For example, NRC endorsement (incorporation by reference) of the ASME Boiler and Pressure Vessel Code (BPV) provisions on inservice inspection and inservice testing, and the ASME Operations and Maintenance (OM) Code, are not ordinarily considered backfits, because it has been the NRC's longstanding policy to incorporate later versions of the ASME codes into its regulations. However, under some circumstances NRC's endorsement of a later ASME BPV or OM Code is treated as a backfit. The application of the Backfit Rule to ASME code endorsements is discussed in the Appendix below. Aside from these backfits, these regulatory analyses should include consideration of the major features (e.g., process changes, recordkeeping requirements) of the regulatory action which should then be aggregated to produce qualitative or quantitative estimates of the overall burdens and benefits in order to determine if the remainder of the action is justified.

Dated in Rockville, Maryland, this 14th day of April, 2003.

For the Nuclear Regulatory Commission.
Annette L. Vietti-Cook,
Secretary of the Commission.

Appendix—Guidance on Backfitting Related to ASME Codes

Section 50.55a requires nuclear power plant licensees to construct ASME *Boiler and Pressure Vessel Code* (BPV Code) Class 1, 2, and 3 components in accordance with the rules provided in section III, division 1, of the ASME BPV Code; inspect Class 1, 2, 3, Class MC, and Class CC components in accordance with the rules provided in section XI, division 1, of the ASME BPV Code; and test Class 1, 2, and 3 pumps and valves in accordance with the rules provided in the ASME *Code for Operation and Maintenance of Nuclear Power Plants* (OM Code). From time to time the NRC amends 10 CFR 50.55a to incorporate by reference later editions and addenda of: Section III, division 1, of the ASME BPV Code; section XI, division 1, of the ASME BPV Code; and the ASME OM Code.

Section A. Incorporation by Reference of Later Editions and Addenda of Section III, Division 1 of ASME BPV Code

Incorporation by reference of later editions and addenda of section III, division 1, of the ASME BPV Code is prospective in nature. The later editions and addenda do not affect a plant that has received a construction permit or an operating license or a design that has been approved, because the edition and addenda to be used in constructing a plant are, by rule, determined on the basis of the date of the construction permit, and are not changed thereafter, except voluntarily by the licensee. Thus, incorporation by reference of a later edition and addenda of section III, division 1, does not constitute a "backfitting" as defined in § 50.109(a)(1).

Section B. Incorporation by Reference of Later Editions and Addenda of Section XI, Division 1, of the ASME BPV and OM Codes

Incorporation by reference of later editions and addenda of section XI, division 1, of the ASME BPV Code and the ASME OM Code affect the ISI and IST programs of operating reactors. However, the Backfit Rule generally does not apply to incorporation by reference of later editions and addenda of the ASME BPV (section XI) and OM codes for the following reasons—

(1) The NRC's longstanding policy has been to incorporate later versions of the ASME codes into its regulations; thus licensees know when receiving their operating licenses that such updating is part of the regulatory process. This is reflected in § 50.55a which requires licensees to revise their ISI and IST programs every 120 months to the latest edition and addenda of section XI of the ASME BPV Code and the ASME OM Code incorporated by reference into § 50.55a that is in effect 12 months prior to the start of a new 120-month ISI and IST interval. Thus, when the NRC endorses a later version of a code, it is implementing this longstanding policy.

(2) ASME BPV and OM codes are national consensus standards developed by participants with broad and varied interests,

in which all interested parties (including the NRC and utilities) participate. This consideration is consistent with both the intent and spirit of the Backfit Rule (i.e., the NRC provides for the protection of the public health and safety, and does not unilaterally impose undue burden on applicants or licensees).

(3) Endorsement of these ASME codes is consistent with the National Technology Transfer and Advancement Act, inasmuch as the NRC has determined that there are sound regulatory reasons for establishing regulatory requirements for design, maintenance, inservice inspection and inservice testing by rulemaking.

Section C. Other Circumstances Where the NRC Does Not Apply the Backfit Rule to the Endorsement of a Later Code

Other circumstances where the NRC does not apply the Backfit Rule to the endorsement of a later code are as follows—

(1) When the NRC takes exception to a later ASME BPV or OM code provision, but merely retains the current existing requirement, prohibits the use of the later code provision, or limits the use of the later code provision, the Backfit Rule does not apply because the NRC is not imposing new requirements. However, the NRC provides the technical and/or policy bases for taking exceptions to the code in the Statement of Considerations for the rule.

(2) When an NRC exception relaxes an existing ASME BPV or OM code provision but does not prohibit a licensee from using the existing code provision.

Section D. Endorsement of Later ASME BPV or OM Codes That Are Considered Backfits

There are some circumstances where the NRC considers it appropriate to treat as a backfit the endorsement of a later ASME BPV or OM code—

(1) When the NRC endorses a later provision of the ASME BPV or OM code that takes a substantially different direction from the currently existing requirements, the action is treated as a backfit. An example was the NRC's initial endorsement of subsections IWE and IWL of section XI, which imposed containment inspection requirements on operating reactors for the first time. The final rule dated August 8, 1996 (61 FR 41303), incorporated by reference in § 50.55a the 1992 Edition with the 1992 Addenda of IWE and IWL of section XI to require that containments be routinely inspected to detect defects that could compromise a containment's structural integrity. This action expanded the scope of § 50.55a to include components that were not considered by the existing regulations to be within the scope of ISI. Since those requirements involved a substantially different direction, they were treated as backfits, and justified in accordance with the standards of 10 CFR 50.109.

(2) When the NRC requires implementation of later ASME BPV or OM code provision on an expedited basis, the action is treated as a backfit. This applies when implementation is required sooner than it would be required if the NRC simply endorsed the Code without any expedited language. An example was the