

Rules and Regulations

Federal Register

Vol. 68, No. 130

Tuesday, July 8, 2003

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150-AG86

Incorporation by Reference of ASME BPV and OM Code Cases

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to incorporate by reference NRC Regulatory Guides listing Code cases published by the American Society of Mechanical Engineers (ASME) which the NRC has reviewed and found to be acceptable for use. These Code cases provide alternatives to requirements in the ASME Boiler and Pressure Vessel Code (BPV Code) and the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code) pertaining to construction, inservice inspection and inservice testing of nuclear power plant components. This action incorporates by reference three regulatory guides that address NRC review and approval of ASME-published Code cases. Therefore, the Code cases listed in these regulatory guides are incorporated by reference into the NRC's regulations.

EFFECTIVE DATE: August 7, 2003. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Office of the Federal Register as of August 7, 2003.

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SUPPLEMENTARY INFORMATION:

Background

New editions of the ASME BPV and OM Codes are issued every three years and addenda to the editions are issued annually. It has been the Commission's policy to update 10 CFR 50.55a to incorporate the ASME Code editions and addenda by reference. Section 50.55a was last amended on September 26, 2002 (67 FR 60520), to incorporate by reference the 1998 Edition of these Codes, up to and including the 2000 Addenda. The ASME also publishes Code cases for Section III and Section XI quarterly and Code cases for the OM Code yearly. Code cases are alternatives to the requirements of the ASME BPV Code and the OM Code. In the past the NRC staff's practice was to review these Code cases and find them either acceptable, conditionally acceptable, or unacceptable for use by NRC licensees. These Code cases were then listed in periodically revised regulatory guides (RGs), together with information on their acceptability. Footnote 6 to § 50.55a referred to those RGs listing Code cases determined by the staff to be "suitable for use." However, the publication dates and version numbers of the RGs were not specified in Footnote 6 and these RGs had not been approved by the Director of the *Office of the Federal Register* (OFR) for incorporation by reference into the Code of Federal Regulations.

Discussion

The NRC identified a concern with the practice of generally referencing the RGs addressing ASME Code cases in Footnote 6 to § 50.55a. The notice and comment provisions of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*), as amended, were arguably not satisfied by this practice. To address this matter, on March 19, 2002 (67 FR 12488), the NRC published a proposed amendment to revise § 50.55a to incorporate by reference the regulatory guides which list the ASME Code cases approved or conditionally approved by the NRC.

This final rule amends 10 CFR 50.55a(b) to incorporate by reference the RGs listing ASME BPV and OM Code cases which are approved for use by NRC licensees (including their revision numbers) into Title 10 of the Code of Federal Regulations. The text of existing Footnote 6 to § 50.55a is deleted and all references to Footnote 6 in § 50.55a have

been removed and replaced by language that specifies, where appropriate, that the optional ASME Code cases that are incorporated by reference in § 50.55a(b) may be applied in lieu of the corresponding requirements of the ASME Codes. Sections 50.55a(b)(4), (b)(5), and (b)(6), which specify limitations upon the implementation of approved ASME Code cases, have been added.

Over the past several years, NRC licensees have expressed their dissatisfaction about the length of time it takes the NRC to review and approve Code cases. To improve the efficiency of the process for endorsement of ASME Code cases, the NRC plans to proceed as follows for future updates. First, the NRC will review Code cases and revise the RGs periodically to indicate Code cases approved for use by NRC licensees. The NRC will issue the draft RGs for comment before issuance of the final RGs. At approximately the time each set of final guides is issued, the NRC will also issue the next set of proposed guides. Second, the NRC will conduct rulemakings to incorporate by reference the revised RGs into § 50.55a. The NRC will complete each rulemaking within a short time of the issuance of the applicable final RGs. Where these rulemakings do not involve any significant questions of policy, they will be issued in accordance with the rulemaking authority delegated to the NRC's Executive Director for Operations under NRC Management Directives 6.3 and 9.17. To expedite the issuance of subsequent rules, the NRC will conduct these rulemakings without preparing a rulemaking plan. If the rulemakings are not controversial and significant adverse comment is not expected, the NRC will incorporate by reference future revisions of the RGs through the issuance of direct final rules. These actions should expedite the NRC process for reviewing and approving ASME Code cases.

Resolution of Public Comments

In response to the publication of the proposed rule, the NRC received eight letters commenting on various aspects of the rulemaking. The letters came from utilities, law firms representing utilities, and the Nuclear Energy Institute (NEI). NEI sent a second letter to supplement its first letter. The following sections address the various issues raised by the public commenters.