

1. Comment

On December 28, 2001 (66 FR 67335), the NRC published a notice of the availability of proposed revisions to RGs 1.84 and 1.147 and a new proposed RG [temporarily designated DG-1089 but subsequently given a permanent designation of RG 1.192] and solicited public comments. One rule commenter that had responded to the December 28, 2001, notice requests that the NRC consider the comments he submitted on the proposed regulatory guides as part of this rulemaking.

Response

The NRC has considered the public comments received in response to its December 28, 2001, notice and has resolved those comments by modifying the guides, as appropriate, or providing its rationale for not doing so. The public comments received and the NRC resolution of the comments on the guides is available to the public as indicated in the "Availability of Documents" section of these statements of consideration. The NRC finds no reason to further consider those comments as part of this rulemaking.

2. Comment

One commenter believes that as an alternative to this rulemaking, the NRC should consider developing a Web site (1) where the individual Code cases could be posted for public comment and for subsequent NRC acceptance (identifying any limitations on or exceptions to the use of the Code cases), or (2) where revisions to the RGs could be posted for comment each time the NRC proposes to endorse a Code case. Either method would allow individual Code cases to be reviewed by the NRC, posted for public comment, and accepted for use by licensees within 3-to-6 months of the ASME publication of the Code case, as compared to the 3-to-5 years between past revisions of the RGs.

Response

The commenter's suggestion does not appear to be in compliance with the notice and comment provisions of the APA. The APA requires notice of proposed rulemaking to be published in the **Federal Register**. As discussed earlier, the Code cases listed in the RGs to be incorporated by reference provide alternatives to compliance with the ASME Codes, which are rules by virtue of their incorporation by reference into § 50.55a. Accordingly, it is the NRC's view that any generally applicable alternatives to the endorsed ASME Codes must be considered requirements,

and are therefore subject to the notice and comment requirements of the APA.

3. Comment

Some commenters state that the NRC's regulations already allow "generic" approval of Code cases as alternatives to the requirements in § 50.55a. In accordance with § 50.55a(a)(3), alternatives "may be used when authorized by the Director of the Office of Nuclear Reactor Regulation" if the alternatives provide an acceptable level of quality and safety. Several commenters believe that the NRC's acceptance on a generic basis could be authorized in a generic communication, such as a regulatory issue summary. These commenters recommend that if the NRC determines that the current provisions do not allow a generic approval in this manner, the NRC should provide a generic approval process similar to § 50.55a(a)(3) that would not require continued rulemaking for endorsement of Code cases.

Response

The NRC does not agree that the provisions in § 50.55a(a)(3) provide for generic approval of Code cases. This paragraph allows licensees, on a licensee-specific basis, to request NRC's review and approval of alternatives to the requirements in the ASME Codes. The purpose of § 50.55a(a)(3) is to provide a mechanism for individual licensees to request approval to implement measures (including Code cases) not generically approved by the NRC in order to meet specific licensee needs. The NRC does not believe that it may through rulemaking adopt a procedure for "generically" approving alternatives to ASME Code provisions which are incorporated by reference in § 50.55a if the procedure does not meet the requirements for rulemaking or an "order" under the APA.

4. Comment

While acknowledging that the recommendation is beyond the scope of this rulemaking, one commenter suggests that the NRC explore whether § 50.55a should be revised to no longer reference the editions and addenda of the ASME Code. The editions and addenda of the Code and the Code cases could be put into RGs which provide a means by which the revised regulation could be met. The commenter believes that both the editions and addenda of the Code sections and Code cases could be approved more efficiently in this manner.

Response

The NRC previously considered this approach but rejected it because of the difficulty, the length of time, and substantial resources that would be necessary to develop a rule that sets forth general requirements for inservice inspection (ISI), inservice testing (IST), and the construction of nuclear power plant components. The NRC agrees that if the rule were revised to no longer incorporate the ASME Codes by reference, then this rulemaking to approve Code cases would not be necessary. However, as a practical matter, to avoid imposing a backfit, the rule would likely have to include a grandfather provision that would allow licensees to use current ASME Code requirements already incorporated by reference into § 50.55a. Thus, the NRC would still be faced with the task of conducting rulemakings to approve Code cases for the grandfathered licensees.

5. Comment

Several commenters urge the NRC to expedite the process for reviewing and approving ASME Code cases. One commenter believes that the proposed rule is inconsistent with the NRC strategic goal of improving the efficiency of the regulatory process. Alternative approaches for streamlining the process should be explored.

Response

The NRC agrees that the process of approving ASME BPV and OM Code cases through incorporation by reference into the regulations is cumbersome and that a more efficient process would better satisfy the NRC's goal of streamlining the regulatory process. As mentioned in the Discussion section of these statements of consideration, the NRC is planning several actions that it believes will improve the timeliness of the incorporation by reference process. Other actions to improve the efficiency of the Code case approval process are discussed in the Resolution of Public Comments on Guides document published in conjunction with the publication of the RGs in question (see "Availability of Documents" section). However, any streamlining of the process must comply with applicable law.

6. Comment

One commenter recommends that, if the NRC believes it must use the rulemaking process to incorporate by reference its Code case approvals, maximum use should be made of the direct final rule process to enable