

licensees to implement Code cases sooner.

Response

The NRC agrees with this comment and is considering the feasibility of taking this approach with future rulemakings of this type. Direct final rules are published together with companion proposed rules containing the identical regulations. If there is no significant adverse public comment on the direct final rule during the comment period, the rule becomes a final rule within a specified number of days after publication. If one or more significant adverse comment is received, the direct final rule is withdrawn and the proposed rule is treated as though no direct final rule had been published. There is no further opportunity for public comment. However, the NRC cautions that the RGs in question may control the timeliness in this matter. Unless a method to streamline the RG publication process is developed, efficiencies arrived at by using direct final rules may be minor.

7. Comment

Several commenters object to the wording in proposed § 50.55a(i)(2)(ii), as well as the parallel wording of §§ 50.55a(i)(3)(ii) and (i)(4)(ii). The proposed language would require that users of a Code case implement newly approved versions of the Code case along with any modifications or limitations. The commenters argue that this is inconsistent with the existing requirements in §§ 50.55a(f)(4)(ii) and (g)(4)(ii), which permit licensees to defer implementation of new ASME Code criteria.

Response

The NRC agrees that the proposed rule language would require licensees who have implemented a Code case to implement additional modifications and limitations if the Code case is revised in the future. In general, this is contrary to NRC's intention. The NRC intends that once an approved Code case is implemented by an applicant or licensee, it may continue to apply the Code case until it updates its Code of Record for the component being constructed or until the end of the licensee's current 120-month ISI or IST update interval, as applicable. Accordingly, the proposed rule language has been modified in the final rule §§ 50.55a(b)(4)(ii), (b)(5)(ii), and (b)(6)(ii) (corresponding to §§ 50.55a(i)(2)(ii), (i)(3)(ii), and (i)(4)(ii) in the proposed rule) to clarify the NRC's intention in this regard. An exception to this would be when the NRC's initial

approval of the Code case by a specific licensee is conditioned by including language that requires the licensee to apply any limitations or conditions specified in a revised RG that approves that Code case. Accordingly, the final rule states that the licensee may apply the previous version of the Code case "as authorized," which refers to the NRC's condition in the initial approval of the Code case for use by a specific licensee.

8. Comment

One commenter states that proposed § 50.55a(i)(2)(iv) is not "conducive to" use with repair/replacement activities under Section XI of the ASME Code and the Section XI Code cases. Replacement items are procured over time and many different editions and addenda of Section III may be referenced for different items. Therefore, the phrase in the proposed rule " * * * until the licensee updates its Section III Code of Record" could be interpreted as referring to a singular event rather than an action that occurs many times. Adding the phrase "for the item being constructed" would clarify that a licensee can use an annulled Code case until it procures the specific item to an updated Section III.

The commenter is also concerned about situations in which the licensee implements a Code case to a certain edition of the Code, but later updates his Code of Record to a later edition of the Code. In some instances the updated Code of Record will not have the Code case approved because it has been incorporated into the Code. The commenter recommends the following wording to resolve both concerns: "A licensee that has initiated implementation of a Code case that is subsequently annulled by the ASME may continue to apply that Code case until the licensee updates its Section III Code of Record for the item being constructed to an edition or addenda of Section III that has incorporated the case."

Response

The NRC agrees with these comments and has amended § 50.55a(b)(4)(iii) in the final rule to read as the commenter suggests with some further clarifications, as follows: "Application of an annulled Code case is prohibited unless an applicant or licensee applied the listed Code case prior to it being listed as annulled in Regulatory Guide 1.84. If an applicant or licensee has applied a listed Code case that is later listed as annulled in Regulatory Guide 1.84, the applicant or licensee may continue to apply the Code case until it

updates its Code of Record for the component being constructed."

9. Comment

A commenter requests that the NRC retain Footnote 6 of § 50.55a and amend it to reference a new RG which is temporarily designated as DG-1112. Although this RG, which has been designated NRC Regulatory Guide 1.193, lists Code cases that the NRC has reviewed and not approved, the commenter believes that it would be useful to licensees because they could still implement the Code cases through the provisions of § 50.55a(a)(3), if the NRC's concerns are adequately resolved.

Response

The NRC does not believe that it is appropriate to reference RGs that list disapproved ASME Code cases. The fact the NRC has not incorporated a Code case by reference simply means that the Code case has not received generic NRC approval, and therefore may not be applied without prior NRC review and approval. Referencing RGs which list disapproved Code cases may give the appearance that the NRC has generically disapproved the Code cases in question, which is incorrect. As the commenter points out, disapproved Code cases may be proposed through the relief request process permitted by § 50.55a(a)(3). Also, the NRC does not believe that the lack of a reference to Regulatory Guide 1.193 presents a hardship to licensees. Licensees are generally aware of its existence and availability and may make use of it as they see fit. Thus, the final rule does not reference this RG.

10. Comment

Several commenters recommend that the incorporation by reference of the RGs listing the NRC-approved ASME BPV and OM Code cases be placed in § 50.55a(b), instead of in a new § 50.55a(i) as in the proposed rule, because of the similarity of the requirements.

Response

During the preparation of the proposed rule, the staff considered several options for integrating the incorporation by reference of the RGs with the remaining requirements in § 50.55a and sought public comment on this question. The staff agrees with the commenters that incorporation by reference of the RGs listing NRC-approved Code cases should be co-located with the incorporation by reference of the various ASME BPV and OM Code editions and addenda. Thus, this final rule expands § 50.55a(b) to include the incorporation by reference