

of the RGs and adds paragraphs (b)(4), (b)(5), and (b)(6) to specify the implementation requirements.

11. Comment

Sections 50.55a(i)(2)(iv), 50.55a(i)(3)(iv), and 50.55a(i)(4)(iv) of the proposed rule state that licensees could no longer apply an NRC-approved annulled Code case if the NRC later determines the Code case is unacceptable for use and revises § 50.55a or the applicable regulatory guide (1.84, 1.147, or 1.192) to prohibit continued application of the annulled Code case. Several commenters state that revising § 50.55a or the applicable regulatory guide (1.84, 1.147, or 1.192) to prohibit continued application of the NRC-approved annulled Code case for the remainder of the interval is a backfit.

Response

The NRC agrees that any revision to § 50.55a prohibiting the continued application of an annulled Code case for the remainder of an interval would be a backfit that must be justified in accordance with § 50.109. In order to avoid confusion, the requirement in the proposed rule prohibiting the continued application of an annulled Code case previously approved by the NRC is deleted in the final rule. However, if in the future, an NRC-approved Code case is annulled, allowed to expire, or revised because the Code case is no longer adequate, the NRC will consider amending § 50.55a and the applicable regulatory guide to prohibit continued application of the Code case. The NRC will justify the revision to § 50.55a in accordance with the requirements in § 50.109.

12. Comment

Several commenters recommend that the phrase, “or the optional ASME Code cases listed in the RGs incorporated by reference in paragraph (i) of this section” be added in six other paragraphs in § 50.55a where reference is made to the use of ASME BPV or OM Code provisions.

Response

The phrase in question occurred in various locations of § 50.55a in the proposed rule where the regulations in the current rule had referred the reader to Footnote 6 (which references the RGs listing approved Code cases). The NRC agrees with the commenter that the reference to the use of the optional ASME BPV and OM Code cases should also be included in the specified paragraphs. The NRC has modified §§ 50.55a(f)(3)(iii)(B), (f)(3)(iv)(B),

(f)(4)(i), (f)(4)(ii), (g)(4)(i), and (g)(4)(ii), accordingly.

13. Comment

One commenter states that the incorporation by reference of the ASME Code cases in § 50.55a is unnecessary because the ASME issues Code cases as alternative rules applicable for a 3-year period, after which the Code cases are incorporated into the ASME Code, annulled, or renewed, and because § 50.55a has provisions for endorsement of future editions and addenda of the ASME Code. The commenter also believes the process is inefficient and unlawful because it introduces new regulatory positions without satisfying the requirements of the Backfit Rule, 10 CFR 50.109.

Response

The Commission agrees that once the provisions of a Code case are incorporated into an edition or addenda of the ASME BPV or OM Code, and those editions and addenda of the Codes are incorporated by reference, there is no need for incorporation by reference of those alternative requirements. However, from the time that the Code case is published by the ASME to the time it is listed in an incorporated edition or addenda of the Codes, there is no legal mechanism for the NRC to approve its use other than through the provisions of § 50.55a(a)(3) for requesting approval of alternatives. This requires a case-by-case review and approval, which is time consuming and wasteful of agency resources. Therefore, the Commission has determined that rulemaking approving the use of alternatives to the required ASME Code provisions specified in § 50.55a is the most efficient course of action that complies with applicable law.

This rulemaking contains no requirements that satisfy the definition of a backfit as specified in 10 CFR 50.109(a)(1). The initial application of a Code case is voluntary on the part of the licensee. Absent approval of the NRC, either on a license-specific basis or through a generic rulemaking, a licensee is not legally authorized to use an ASME Code case. Hence, any limitations on the use of Code cases are not backfits as defined in § 50.109(a)(1).

14. Comment

Several commenters believe that the NRC is acting contrary to the intent of Congress in passing the National Technology Transfer and Advancement Act of 1995, (Pub. L. 104–113), which was implemented through Office Management and Budget (OMB) Circular A–119 and NRC Management

Directive 6.5, “NRC Participation on Development and Use of Consensus Standards.” These commenters believe the NRC has not identified regulations that are in direct conflict with the published Code case or documented a regulatory basis for imposing limitations or modifications.

Response

The NRC does not agree with the commenters’ opinion that the NRC has not fully complied with the letter and intent of Public Law 104–113 and the associated guidance. Public Law 104–113, requires that Federal agencies use technical standards that are developed by voluntary consensus standards bodies unless the use of these standards is inconsistent with applicable law or is otherwise impractical. The statute does not require Federal agencies to endorse a standard in its entirety, nor does it forbid Federal agencies to endorse industry consensus standards with limitations or modifications, if the agencies deem the provisions of the standards to be inconsistent with applicable law or otherwise impractical. Endorsing a voluntary consensus standard with limitations, modifications, or exceptions furthers the congressional intent of Federal reliance on voluntary consensus standards by allowing the adoption of substantial portions of consensus standards. Agencies need not reject the standards in their entirety because a few provisions are not acceptable. Moreover, there is no legislative history suggesting that Congress intended agencies to take an “all or nothing” approach to the endorsement of voluntary consensus standards under the Act, and the OMB guidance implementing Public Law 104–113 does not address the matter. The discussions of the limitations and modifications in the RGs and the document on the Resolution of Public Comments on the RGs are sufficient to satisfy the requirements of section 12(d)(3) of Public Law 104–113, and the relevant requirements of OMB Circular A–119 (1998).

15. Comment

According to one commenter the proposed rulemaking is unlawful because it is not in compliance with the Backfit Rule, 10 CFR 50.109. (The commenter provided no explanation of why the proposed rule is in conflict with the Backfit Rule.)

Response

Section 50.109(a)(2) requires that the NRC perform a backfit analysis for any backfits, as defined in § 50.109(a)(1), that it seeks to impose, unless the