

backfits fall into one or more of the delineated exceptions. A backfit is a modification of or addition to systems, components, or design of a facility, or the design approval or manufacturing license, or procedures or organization required to design, construct or operate a facility, any of which may result from a new or amended provision in the Commission's rules or the imposition of a staff regulatory position interpreting the Commission rules that is either new or different from previously applicable staff positions. As discussed in the responses to Comments 11 and 13, the Commission finds that this final rule does not contain any requirements which satisfy the definition of a backfit, and consequently, a backfit analysis is not required.

#### 16. Comment

One commenter states that when Code cases are interpretive of the regulations (or provide an alternative means for achieving compliance with a requirement), they need not be incorporated by reference and that licensees should be permitted to use them with no further NRC action.

#### Response

The NRC agrees that Code cases that are purely interpretations of the regulations incorporated by reference in § 50.55a(b) need not be incorporated by reference. However, the Code cases incorporated by reference in § 50.55a, with or without modifications or limitations, constitute alternatives to the requirements in § 50.55a and not interpretations. Therefore, the NRC believes that incorporating the RGs by reference is the proper treatment of these alternative requirements.

#### Paragraph-by-Paragraph Discussion

On December 28, 2001 (66 FR 67335), the NRC published proposed revisions to RGs 1.84 and 1.147 and a new proposed RG [temporarily designated DG-1089]. The NRC has considered the public comments on these RGs and has resolved those comments by modifying the guides, as appropriate, or providing its rationale for not doing so. Previously, RG 1.84, Revision 31, listed only Section III Code cases related to design and fabrication, and RG 1.85, Revision 31, listed Section III Code cases related to materials and testing. Revision 32 to RG 1.84 lists for the first time in one guide all Section III Code cases that have been approved for use by the NRC. The staff intends to withdraw RG 1.85 when the ensuing revisions to the RGs are published. This rulemaking incorporates by reference Regulatory Guide 1.84, Revision 32, "Design,

Fabrication, and Materials Code Case Acceptability, ASME Section III," Regulatory Guide 1.147, through Revision 13, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1," and Regulatory Guide 1.192, "Operation and Maintenance Code Case Acceptability, ASME OM Code."

#### 1. Paragraph 50.55a(b)

In the proposed rule (March 19, 2002: 67 FR 12488), the language of incorporation by reference of the RGs and the implementation requirements were contained in a new postulated paragraph (i). The NRC requested public comment on the proposed placement of these requirements. As discussed in Comment 10 and the corresponding NRC response, the Commission has decided to place the incorporation by reference of the RGs listing NRC-approved ASME BPV and OM Code case in § 50.55a(b) and the corresponding implementation requirements in §§ 50.55a(b)(4), (b)(5), and (b)(6). In this manner, the incorporation by reference of the RGs listing NRC-approved Code cases would be located with the incorporation by reference of the editions and addenda of the ASME BPV and OM Codes and be more organizationally consistent. Thus § 50.55a(b) has been expanded and now contains the language of incorporation by reference of the RGs listing NRC-approved ASME BPV and OM Code cases and identifies each RG by title and revision number.

Section 50.55a(b) now specifies the applicable RGs for incorporation by reference in addition to the editions and addenda of the ASME Boiler and Pressure Vessel Code and Code for Operation and Maintenance of Nuclear Power Plants. This paragraph incorporates by reference NRC Regulatory Guide 1.84, Revision 32, NRC Regulatory Guide 1.147, through Revision 13, and NRC Regulatory Guide 1.192. This final rule incorporates all of the revisions of Regulatory Guide 1.147 because some licensees continue to apply Code cases listed as approved in earlier revisions to this RG and if these revisions were not incorporated by reference the further use of these Code cases would be prohibited. Similarly, Revision 14 of Regulatory Guide 1.147 will be incorporated by reference in the same fashion because it has already been prepared in draft form and major reformatting of that document would result in a substantial delay in issuing the final version. However, the NRC will format Revision 15 of Regulatory Guide 1.147 so that it provides the current status of all Section XI Code cases and

at that time the incorporation by reference of previous revisions of that RG will be superceded.

The RGs incorporated by reference in this final rule list Code cases applicable to Section III of the ASME BPV Code, Section XI of the ASME BPV Code, and the ASME OM Code, respectively, that have been approved unconditionally, or with conditions and limitations specified by the NRC, as alternatives to specific Code provisions. NRC approval of the use of Code cases listed in these RGs is granted only if the limitations and conditions, if any, are applied.

Sections 50.55a(b)(4), (b)(5), and (b)(6) require that licensees or applicants initially applying a Code case which is listed in one of the RGs as acceptable apply the most recent version of the Code case listed in the RG. If a licensee or applicant is applying a particular version of an approved Section III Code case, and a later version is incorporated into the applicable RG as acceptable, the licensee or applicant may continue to apply the earlier version of the Code case until it updates its Code of Record for the component being constructed. A licensee may continue to apply the earlier version of a Section XI or OM Code case until the end of the licensee's current 120-month ISI or IST update interval, including any adjustments to the interval permitted under Paragraphs IWA-2430(c)(1) and (e) of Section XI of the ASME BPV Code or Paragraphs ISTA 2.2.3(d) and (e) of the OM Code.

Sections 50.55a (b)(4), (b)(5), and (b)(6) also specify that a licensee is permitted to apply an annulled or expired Code case provided that it has been applied before it has been listed as expired or annulled in RG 1.84, 1.147, or 1.192. A licensee implementing an approved Section III Code case that is subsequently listed as annulled or expired in RG 1.84 may continue to apply that Code case until it updates its Code of Record for the component being constructed. A licensee implementing an approved Section XI or OM Code case that is subsequently listed as annulled or expired in RG 1.147 or RG 1.192 may continue to apply that Code case until it updates its ISI or IST program to an edition or addenda of the Code that has incorporated the Code case. In most circumstances, a Code case is annulled or allowed to expire by the ASME because the Code case is included in a later edition or addenda of the ASME BPV or OM Codes. When a licensee updates its construction, ISI or IST Code of Record, the provisions of the Code can then be applied instead of the annulled or expired Code case. In any event, a licensee may continue to use the annulled or expired Code case