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Comments

The NRC Should Improve the Efficiency of the ASME Code Case Approval Process by Eliminating Unnecessary Rulemaking and Using More Expeditious Means to Approve ASME Code Cases

The NRSRG supports the NRC's effort to expedite the process for reviewing and approving ASME Code Cases for use by licensees. Streamlined procedures for NRC approval of Code Cases would help improve the efficiency and effectiveness of the regulatory process and reduce unnecessary regulatory burden by significantly reducing the need for licensee submittal and Staff review and approval of plant-specific relief and exemption requests to implement certain ASME Code Cases.

The NRSRG, however, urges the NRC to consider further means to make the Code Case approval process more efficient. The conclusion in the proposed rule that the NRC must engage in an additional layer of rulemaking to incorporate by reference revised RGs approving Code Cases seems to contradict the idea of improving regulatory efficiency. In our view, the NRC should seek ways to allow licensee use of approved Code Cases without the need for piecemeal notice-and-comment rulemakings to incorporate Code Cases by reference. Eliminating unnecessary rulemaking actions would be consistent with the intent of the National Technology Transfer and Advancement Act of 1995 (Pub. L. No. 104-113, 110 Stat. 775 (1996)) to have agencies use industry codes and standards wherever practical and appropriate.² As the NRC has recognized, engaging in rulemaking to incorporate by reference frequently revised industry standards can be "problematic because attempts to have the regulation reflect the most current version of that standard could place the regulation in a state of perpetual rulemaking . . . it is in the NRC's best interest to incorporate consensus standards quickly in the NRC process and stakeholder products."³

In this regard, we urge the NRC to continue working with the Nuclear Energy Institute to develop more efficient ways to expedite the ASME Code Case approval and implementation process. To the extent the NRC believes that it must use the rulemaking process to incorporate

² See Office of Management and Budget Circular No. A-119, Revised, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities" (February 10, 1998).

³ Management Directive 6.5, "NRC Participation in the Development and Use of Consensus Standards" (November 2, 1999), at p. 8.

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by reference its Code Case approvals, we recommend that the NRC make maximum use of direct final rules. We note, in this connection, that the Regulatory Analysis for the proposed rule addresses the possible use of direct final rules to incorporate by reference RGs listing new approved Code Cases. The direct final rulemaking process would enable licensees to implement approved Code Cases sooner and help reduce NRC resource burden.

A more fundamental change that deserves to be explored is whether Section 50.55a should be revised (or an alternative regulation developed for voluntary adoption by licensees) to eliminate the reference to the ASME Code sections (*e.g.*, Section XI). The references to ASME Code sections could be "relocated" from the regulation itself and incorporated instead into a Regulatory Guide as providing an acceptable means to comply with the applicable regulation. In this way, updates to the Code sections and Code Cases could be approved more efficiently for licensee use. While the development of such an alternative rule is beyond the scope of the present rulemaking, we believe it deserves further consideration.

In addition to eliminating unnecessary rulemaking efforts, the NRC should also work with NEI to explore ways to make the current Regulatory Guide process more efficient. Under the current process, it has taken several years in some cases for the NRC to update the RGs listing Code Cases approved for use. The NRC may be able to expedite the process by utilizing Regulatory Issue Summaries (RIS). Similar to the Consolidated Line Item Improvement Process for Technical Specification amendments, a RIS could announce NRC approval of Code Cases for use by licensees and indicate whether relief requests would be necessary and, if so, provide the generic basis for approval of such requests. Thereafter, the NRC could update the appropriate RGs and conduct any necessary rulemaking.

Incorporation by Reference Is Only Necessary for Code Cases that Provide Alternatives to Current ASME Code Requirements

The proposed rule suggests that the NRC must engage in formal rulemaking to incorporate by reference any revised RGs that approve ASME Code Cases. The proposed rule, in this regard, is based on the stated assumption that "Code cases are generally alternatives to the requirements of the ASME BPV Code and the OM Code." 67 Fed. Reg. at 12,489. The proposed rule appears to be overly broad in this respect and should be refined.

The ASME publishes Code Cases quarterly. Codes Cases may provide alternatives developed and approved by ASME, or they may explain the intent of existing Code requirements. See Draft Regulatory Guide DG-1091, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1," issued in December 2001, at p. 2. Where a Code Case simply explains the intent of an existing Code requirement, licensees should be able to implement the Code Case without the need for any NRC action. Such a Code Case cannot be characterized as providing an alternative to an existing regulatory requirement. Thus, no incorporation by reference rulemaking is necessary or other regulatory action. The final rule should clarify this point.

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There may also be Code Cases that do not actually provide an alternative to an existing Code requirement, but rather provide *alternative means of achieving compliance* with that requirement. For such Code Cases, no incorporation-by-reference rulemaking should be necessary to permit their use by licensees because compliance with the existing Code requirement still would be ensured.

The NRSRG appreciates the opportunity to comment on this important rulemaking and respectfully requests that the NRC consider revisions to the proposed rule and further improvements to the Code Case approval process along the lines described above.

Sincerely,

[Original signed by Daniel F. Stenger]

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