ATTACHMENT 4

RESOLUTION OF PUBLIC COMMENTS
FOR AMENDMENT TO CFR 50.55a, "CODES AND STANDARDS"

On August 3, 2001 (66 FR 40626), the NRC published a *Federal Register* notice that presented a proposed rule to amend 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities." Interested parties submitted written comments on the proposed rule. Comments were received from 17 separate sources. These sources consisted of 10 utilities, 4 service organizations, and 3 individuals. The majority of public comments on the proposed rule are addressed in the statement of considerations (SOC) for the final rule. Public comments on the proposed rule not addressed in the SOC for the final rule are provided in this document. Comments are numbered according to the SOC for the proposed rule.

2.2 Section XI

Several commenters suggested that the NRC revise § 50.55a(g)(4)(i) and (ii) to eliminate the requirement to update Class MC and Class CC inservice inspection (ISI) programs to the latest edition and addenda IWE and IWL every 120 months. The commenters stated the large number of modifications to IWE and IWL in the proposed rule indicate that the NRC finds the earlier editions and addenda of IWE and IWL less objectionable than the 1998 Edition with the 1999 Addenda and 2000 Addenda of IWE and IWL.

The NRC disagrees and finds that it is beneficial for licensees to update to the 1998 Edition with the 1999 Addenda and 2000 Addenda of IWL and IWE. A significant number of revisions to IWE and IWL were reviewed during the rulemaking process to incorporate by reference the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of IWE and IWL. The NRC imposed modifications to only a small fraction of the revisions. The Regulatory Analysis and Environmental Assessment for the final rule describe revisions to IWE and IWL that are beneficial because they reduce cost and occupational exposure. Furthermore, many of the requirements in the earlier editions and addenda of IWE and IWL are unnecessarily burdensome because they are based on detailed inspections of vessels and piping that were not written for large containment surfaces. Many of the changes in the later editions and addenda of IWE and IWL revise these examination methods to make them more applicable to containment examinations.

2.2.1.3 General and Detailed Visual Examination Methods

One commenter stated that the explanations regarding owner-defined visual examination requirements in Section 2.2.1 and Section 2.2.1.3 of the SOC for the proposed rule are not consistent, pointing out that Section 2.2.1 of the SOC states that owner-defined visual examination requirements are acceptable and 2.2.1.3 of the SOC states that owner-defined visual examination requirements are unacceptable.

The NRC agrees with the commenter. Section 2.2.1 of the SOC correctly states that the owner-defined visual examination requirements in the 1998 Edition, 1999 Addenda and 2000 Addenda of IWE-2310(a) as supplemented by the 1998 Edition, 1999 Addenda and 2000 Addenda of IWE-2310(e) are acceptable. However, Section 2.2.1.3 of the SOC erroneously states that owner-defined visual examinations requirements are unacceptable. It was the intent of the NRC to discuss owner-defined visual examination "methods" rather than owner-defined visual examination "requirements" in Section 2.2.1.3 of the SOC.

Owner-defined visual examination “requirements” provide specific guidance that applies to the examination of containment surfaces. For example, the examination of containment surface painted areas for evidence of flaking or blistering is a visual examination “requirement”. Owner-defined visual examination “methods” are defined in IWA-2200, and address illumination level requirements, remote and direct examination requirements, and character resolution requirements. Therefore, Section 2.2.1.3 of the SOC for the final rule is revised to address owner-defined visual examination “methods”.

2.2.2 Examination of Containment Bolted Connections

Section 50.55a(b)(2)(ix)(I)(*3*) of the proposed rule would require that a damaged containment bolted connection be disassembled, and a detailed visual examination of the bolting performed. One commenter stated that § 50.55a(b)(2)(ix)(I)(*3*) is unnecessary because the provisions in IWE provide acceptable standards for correcting unacceptable bolted conditions. The commenter stated that a more detailed visual examination of bolting is required by IWE when damaged bolting is identified during general visual examinations, and that IWE requires that damaged bolted connections can only be accepted by a repair/replacement activity or by engineering evaluation. Another commenter pointed out that since containment bolted connections are not allowed to be disassembled when containment integrity is required, the option to use an engineering evaluation to accept the condition, if appropriate, reduces the unnecessary burden because licensees would not be required to change to a mode that does not require containment integrity to disassemble the bolted connection.

The NRC agrees with the commenters that it may not always be necessary to disassemble bolted connections as corrective action for damage bolting, and that IWE provides acceptable standards for correcting unacceptable bolted connections. However, § 50.55a(b)(2)(ix)(I)(*3*) of the proposed rule is revised in consideration of other public comments regarding examination of containment bolting as discussed in the final rule. Section 50.55a(b)(2)(ix)(I) in the final rule does no longer addresses corrective actions.

Section 50.55a(b)(2)(ix)(I)(*4*) of the proposed rule would require that containment bolting be visually examined whenever the bolting is disassembled for maintenance. One commenter stated that there is no need for the modification because inspection of bolting is a typical maintenance activity that applies to all pressure boundary bolting, not just containment bolting.

The NRC agrees that the scope of Section XI does not normally include examinations that are conducted during routine maintenance activities, but notes there may be maintenance-related activities associated with ISI. The ISI of components to verify that service-related degradation is not occurring is within the scope of Section XI. However, § 50.55a(b)(2)(ix)(I) of the proposed rule is revised in consideration of other public comments regarding examination of containment bolting as discussed in the final rule. Section 50.55a(b)(2)(ix)(I) in the final rule allows the option of conducting visual examinations of the inaccessible areas of containment bolted connections during maintenance that requires a bolted connection be disassembled or during visual examinations that are conducted during scheduled ISI inspections.

8. Voluntary Consensus Standards

Alternative Consensus Standards

One commenter questioned the reason for considering adoption of alternatives to ASME Codes currently referenced in the *Code of Federal Regulations*. The NRC is required to consider alternative consensus standards under the National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113 and the Federal government's implementing guidance, OMB Circular A-119.

NRC Directive 6.5

One commenter stated that, contrary to NRC Directive 6.5, *NRC Participation on Development and Use of Consensus Standards*, the proposed rulemaking does not identify the bases for imposing each limitation or modification to the ASME Code, viz., whether the standard is technically incorrect, or inconsistent with current regulations. The NRC disagrees with the comment. The NRC believes that the discussions of the limitations and modifications in the SOC for the proposed rule identifies the bases for each of the limitations and modifications, and therefore the rulemaking satisfies the guidance in NRC Directive 6.5. For example, Sections 2.2.1.1 through 2.2.1.4 of the proposed rule discuss four modifications that prohibit the use of owner-defined requirements (§§ 50.55a(b)(2)(viii)(F), 50.55a(b)(2)(ix)(F), 50.55a(b)(2)(ix)(G), and 50.55a(b)(2)(ix)(H)). The proposed rule explains that editions and addenda of the Section XI prior to the 1997 Addenda contained specific provisions for examining containment surfaces and that these provisions were replaced with owner-defined provisions in the 1997 Addenda through 2000 Addenda of Section XI. Therefore, the owner-defined provisions for examining containment surfaces in the 1997 Addenda through 2000 Addenda are not consistent with the current regulations approved by the NRC for examining containment surfaces that are incorporated by reference in § 50.55a.

NRC Participation on ASME Code Committees

Several commenters stated that the large number of modifications and limitations in the proposed rule is an indication that the NRC participation in the development of the ASME Code is not promoting the endorsement of the ASME Code in § 50.55a as approved by the consensus process. The commenters emphasized that the NRC representatives participating in the ASME consensus process should voice concerns or propose alternative options, and cast negative votes when there are technical and regulatory concerns. This would allow other members on the committees to evaluate the NRC technical and regulatory concerns during the development of the Code, and thereby reduce the number of modifications and limitations needed when incorporating the ASME Code by reference in § 50.55a. The commenters also stated that Code changes are based on more than 30 years of plant operations and experience, years of research into better ways to inspect components or evaluate the results of inspection results, or the use of risk insights.

The NRC imposes limitations or modifications on the use of the consensus standards that are used in its regulatory process when, in its view, the consensus standard does not adequately address a specific regulatory issue, the standard is technically incorrect, or it is

inconsistent with current regulations. In accordance with NRC internal procedures, NRC representatives on ASME committees coordinate with other NRC staff to ensure that the views of NRC representatives on ASME committees are consistent with the views of the NRC staff. This coordination minimizes the need for modifications and limitations and, thus, reduces unnecessary regulatory burden. The NRC strives to develop technical positions in a timely manner for use in the standards development process. However, in instances when it is not practical for NRC to develop a position on an issue prior to casting its vote, NRC representatives on ASME committees are authorized to use their best judgement based on their experience, technical expertise, and discussion with other NRC staff. The goal that the NRC develop a final technical position on every Code change prior to voting on the change on the Main Committee level is not always achievable because of higher priority activities and current NRC staffing levels.

The NRC reviewed approximately 448 non-editorial Code changes during the rulemaking process to incorporate by reference the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of Section III and Section XI of the ASME BPV Code and the ASME OM Code. Although it may appear that there are a significant number of modifications and limitations in the final rule, limitations or modifications were imposed on a small fraction of the ASME Code non-editorial changes published in 1997 through 2000. Approximately 165 of the 448 non-editorial changes reviewed were considered reductions of Code requirements, and the NRC approved all but a small fraction of these non-editorial changes. In conclusion, the NRC finds the commenters' concern, that the NRC participation in the development of the ASME Code is not promoting the endorsement of the ASME Code as approved by the consensus process, is not justified.

13. Backfit Analysis

One commenter stated that the third page of Enclosure 2, of an Office of General Council (OGC) memorandum dated March 15, 1989, clearly states that the NRC imposition of modifications or limitations to the ASME Code is subject to the backfitting rule.

The NRC reviewed the OGC memorandum dated March 15, 1989, referenced in the comment, and is unable to find anything in the memorandum that states that the imposition of modifications or limitations is a backfit. The OGC memorandum discusses the backfit requirements associated with incorporating by reference in § 50.55a a new Subsection of the ASME Code (Subsection IWE of Section XI) and a routine update of § 50.55a. The NRC finds that there is not an Enclosure 2 to the OGC memorandum. The commenter apparently is referring to a slide presented to the Committee to Review Generic Requirements (CRGR) during a meeting conducted on December 5, 1989 (CRGR Meeting Number 175). The slide is titled, "Processing of Amendments to 10 CFR 50.55a Relative to Backfit Rule Involving Sections III and XI of the ASME Code." The bullets on the slide indicate that § 50.55a is being updated and that the NRC-proposed modifications and limitations were presented to CRGR for review. The minutes of CRGR Meeting Number 175 were issued on December 21, 1989. The meeting minutes do not address the results of the CRGR review of the NRC-proposed modifications and limitations. In conclusion, the Enclosure 2 does not represent NRC's legal view nor a formal position on backfits.

14. Comments on Existing Sections of 10 CFR 50.55a not Revised by the Proposed Rule

ISI Summary Report

Several commenters suggested that the regulations in §§ 50.55a(b)(2)(viii)(C), (D), (E) and §§ 50.55a(b)(2)(ix)(A), (D)(*1*) be revised to replace the existing requirement to record certain information in the ISI summary Report required by IWA-6000 with a new requirement to provide the information in a report to the NRC within 90 calender days following completion of each refueling outage. The NRC believes that the requirements in IWA-6000 apply to Class CC and Class MC components; therefore, there is not a conflict between the regulations in §§ 50.55a(b)(2)(viii)(C), (D), (E) and §§ 50.55a(b)(2)(ix)(A), (D)(*1*), and the requirements in IWA-6000. Therefore, the existing regulations in §§ 50.55a(b)(2)(viii)(C), (D), (E) and §§ 50.55a(b)(2)(ix)(A), (D)(*1*) are not revised in the final rule.

Testing Containment Boundary Welds

Several commenters identified a discrepancy between two NRC-approved documents regarding testing of certain containment boundary welds and recommended that the NRC place a modification or limitation on the use of IWE-5222(c) to resolve the discrepancy. Paragraph IWE-5222(c) of Section XI of the ASME BPV Code, and a Nuclear Energy Institute (NEI) guideline provide different leakage test deferral provisions for containment boundary welds. The NRC finds that the provisions in IWE-5222(c) are acceptable, and the discrepancy between the two documents is not significant. Therefore, it is inappropriate to impose a modification or limitation on the use of IWE-5222(c). The commenters should either request the ASME to revise IWE-5222(c) or request NEI to revise its guideline.

NRC Endorsement of Section III, Division 2

Several commenters requested that the NRC revise § 50.55a(b)(1) to incorporate by reference Section III, Division 2, of the ASME BPV Code, which applies to the construction of concrete containments. The NRC endorsement of new Divisions of the ASME Code to include requirements that are not presently considered by the regulations is considered a backfit. The NRC endorsement of Section III, Division 2, of the ASME BPV Code would significantly increase the complexity of this rulemaking. The NRC would be required to review the appropriate editions and addenda of Section III, Division 2, resubmit the proposed rule for public comment because of the change in scope from the original proposed rule, and demonstrate that increase in safety would justify the additional cost associated with the new regulation, or demonstrate that the regulatory action is needed to protect the public. Therefore, the final rule does not endorse Section III, Division 2.

NRC Authorization of Alternatives to ASME BPV and OM Codes

Several commenters requested that § 50.55a(a)(3) be revised to allow the NRC to approve alternatives to the requirements in § 50.55a(b). The NRC believes that the existing § 50.55a(a)(3) allows the NRC to approve alternatives to the requirements in §§ 50.55a(b)(2) and (3). The regulations in §§ 50.55a(f) and (g) reference the applicable edition and addenda of the ASME Code subject to the modifications and limitations listed in paragraph § 50.55a(b). Therefore, § 50.55a(a)(3) authorizes the NRC to approve alternatives to requirements in §§ 50.55a(b)(2) and (3) via §§ 50.55a(f) and (g).

MOV Stroke Time Testing

Several commenters requested that the NRC revise § 50.55a(b)(3)(ii) to clarify that in the future, the NRC plans to impose a new regulation that replaces the MOV stroke time test requirements in the ASME OM Code with other MOV test requirements that do not include stroke-time testing. The NRC published the requirement in § 50.55a(b)(3)(ii) to supplement MOV stroke-time testing with a program to demonstrate MOV design-basis capability on September 22, 1999 (64 FR 51370). In the SOC in the *Federal Register* Notice, the NRC indicated that the basis for this requirement was the recognized inadequacy of stroke-time testing in providing assurance of MOV operability under design-basis conditions. In the proposed rule dated August 3, 2001 (66 FR 40626), the NRC proposed administrative changes to the regulation to update the requirement to apply to the more recent Code edition and addenda, and is not revising the technical requirements in § 50.55a(b)(3)(ii). The NRC does not consider it appropriate to incorporate the statement suggested in the comments regarding possible future rulemaking on MOV stroke-time testing. The ASME is working to address the weakness in the Code provisions for MOV stroke-time testing. The NRC plans to continue to cooperate with ASME to improve the Code with respect to inservice testing of MOVs and other power-operated valves.

Appendix VIII Implementation Dates

Several commenters requested that the NRC revise § 50.55a(g)(6)(C)(*1*) to extend the implementation date for Supplements 2 and 3 of Appendix VIII from May 22, 2000, to November 22, 2002. The NRC notes that the existing regulation in § 50.55a(g)(6)(C)(*1*) requires that Supplements 2 and 3 of Appendix VIII be implemented by May 22, 2000. The NRC has granted relief to individual licensees extending Supplements 2 and 3 implementation dates when appropriate; therefore it is not necessary to revise § 50.55a(g)(6)(C)(*1*) as requested.