

June 18, 2004

MEMORANDUM TO: Luis A. Reyes  
Executive Director for Operations

FROM: J. E. Dyer, Director */RA/*  
Office of Nuclear Reactor Regulation

SUBJECT: PROPOSED AMENDMENT TO INCORPORATE BY REFERENCE THE  
NUCLEAR REGULATORY COMMISSION'S REGULATORY GUIDES  
LISTING ACCEPTABLE AMERICAN SOCIETY OF MECHANICAL  
ENGINEERS BOILER AND PRESSURE VESSEL CODE CASES INTO  
10 CFR 50.55a, "CODES AND STANDARDS"

Attached for your signature is a proposed rulemaking to amend § 50.55a of Title 10 of the *Code of Federal Regulations* (10 CFR 50.55a), "Codes and Standards" (Attachment 1).

Background:

Section 50.55a of the Nuclear Regulatory Commission's (NRC) regulations requires that nuclear power plant owners construct Class 1, Class 2, and Class 3 components in accordance with Section III, Division 1, of the American Society of Mechanical Engineers (ASME) *Boiler and Pressure Vessel Code* (BPV Code). Section 50.55a also requires that owners perform inservice inspection (ISI) of Class 1, Class 2, Class 3, Class MC, and Class CC components in accordance with Section XI, Division 1, of the BPV Code, and that they perform inservice testing (IST) of Class 1, Class 2, and Class 3 safety-related pumps and valves in accordance with the *Code for Operation and Maintenance of Nuclear Power Plants* (OM Code). The ASME publishes Code cases for Section III and Section XI of the ASME BPV Code quarterly, and Code cases for the OM Code annually. These Code cases provide alternatives to the ASME BPV Code and OM Code requirements, and often reflect improvements in technology, new information, or improved procedures. It has been the NRC staff's practice to review these Code cases and find them acceptable, conditionally acceptable, or unacceptable for use by NRC-licensed facilities and to publish these findings in regulatory guides (RG). The RGs listing the NRC-approved Code cases are then incorporated by reference in § 50.55a of Title 10 of the *Code of Federal Regulations*. Thus, licensees may apply these Code cases as alternatives to specific provisions of the ASME BPV and OM Codes.

Discussion:

On July 8, 2003 (68 FR 40469), the NRC published a final rule which incorporated by reference three NRC RGs listing ASME Code cases which have been reviewed and approved or conditionally approved for use by NRC licensees. However, the ASME publishes new

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Section III and XI Code cases on a quarterly basis. Thus, it is incumbent on the staff to review and rule on the acceptability of these Code cases periodically. The NRC-approved Code cases incorporated by reference are accorded the same legal status as the ASME BPV Code and the OM Code, and NRC licensees are generally permitted to apply these Code cases without prior NRC review and approval.

This rulemaking is a continuation of the staff's practice of incorporating by reference the RGs listing the most current set of ASME Code cases having received NRC approval. The staff proposes to incorporate by reference RG 1.84, Revision 33, and RG 1.147, Revision 14.

Notices:

A notice to the Commission concerning the publication of this proposed rule is attached (Attachment 2).

Resources:

The Office of Nuclear Reactor Regulation resources for completion of the final rulemaking are estimated at 1.5 FTE for FY 2003 and FY 2004, and have been budgeted. The resources for the next periodic update to incorporate the RGs by reference will be included in the FY 2005 and FY 2006 budget estimates.

Coordination:

The Office of Nuclear Regulatory Research concurs with this proposed rule. The Office of the General Counsel has reviewed this proposed rule and has no legal objection. The Office of the Chief Financial Officer has reviewed this proposed rule for resource implications and has no objection. In a letter dated November 13, 2003, from the Chairman of the Advisory Committee on Reactor Safeguards (ACRS), Mario V. Bonaca, to William D. Travers, Executive Director of Operations, the ACRS agreed to defer routine updates of 10 CFR 50.55a which do not involve significant issues until the public comments on the proposed rules are resolved. Similarly, the Committee To Review Generic Requirements (CRGR) in a memorandum dated December 11, 2003, has agreed to defer review of those updates to 10 CFR 50.55a that do not identify any backfits until after public comments are resolved.

Notes:

The draft RGs have been approved for publication and have been sent to the publisher. A Draft Regulatory Analysis (Attachment 3), Authority Statement (Attachment 4), Notice for Proposed Rule, and Evaluation of Code Cases (Attachment 5) supporting this proposed rulemaking have been prepared.

Attachments: As stated

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\*See previous concurrence