

October 2, 2012

Bryan Erler
American Society of Mechanical Engineers
3 Park Avenue
New York, NY 10016-5990

Richard Swayne
American Society of Mechanical Engineers
3 Park Avenue
New York, NY 10016-5990

Dear Mr. Erler and Mr. Swayne:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of August 17, 2012, regarding the introduction of the American Society of Mechanical Engineers (ASME) Certification Mark with code-specific designators in the 2011 addenda of the 2010 edition of the ASME Boiler and Pressure Vessel Code (the Code) and the relationship of the Certification Mark to the ASME Code Symbol Stamps, which were previously used by certificate holders. Specifically, you requested that the NRC issue a generic communication to document the NRC's acceptance of the ASME's position that the ASME Code Symbol Stamps and ASME Certification Mark are equivalent, with respect to both certifying code compliance by certificate holders.

The NRC is aware of the potential administrative and regulatory burdens which could develop due to the introduction of the ASME Certification Mark in the 2011 addenda of the 2010 edition of the Code. The NRC also recognizes that the equivalency issue is purely administrative in nature and does not represent a safety concern and, as clarified on the ASME Web site, the accompanying errata approved by the ASME must be used with the Certification Mark, effective September 5, 2012.

Based on a number of considerations, the NRC has developed a path forward to address the issue raised in your August 17, 2012, letter. The path forward relies on the development of an enforcement guidance memorandum (EGM) in parallel with a regulatory issue summary (RIS) which will provide additional details on the contents of the EGM and acceptable approaches for resolving this issue. The EGM would provide the NRC with the ability to exercise discretion in enforcing the regulatory requirements related to the use of the Code, given that this issue is administrative in nature and does not represent a technical concern which could affect public health and safety. This path forward ensures that unnecessary regulatory burden is not imposed on licensees during the time period prior to final resolution of the equivalency issue. The development of an EGM and RIS are projected to be completed and ready for issuance near the end of 2012.

In the meantime, the NRC will entertain the use of alternatives to the regulations as permitted in paragraph 50.55a(a)(3) of Title 10 of the *Code of Federal Regulations* (10 CFR). This path is more expeditious than the enforcement discretion path, but relies on separate plant submittals. The two new reactors recently licensed under Part 52 of 10 CFR that are currently under

construction and for which a more urgent need exists to use the Certification Mark may submit a request for NRC authorization of an alternative to the requirements of Section III of the ASME Code to allow the use of either the Code Symbol Stamps or Certification Mark pursuant to 10 CFR 50.55a(a)(3). This path also does not preclude licensees of operating plants that are in a similar urgent situation from submitting a request to the NRC to use an alternative to the Code requirements regarding the use of the Code Symbol Stamp and Certification Mark pursuant to 10 CFR 50.55a(a)(3).

In our view, the impact of the ASME Certification Mark on the ongoing rulemaking efforts associated with the incorporation by reference (IBR) of the 2009 addenda through the 2011 addenda of the Code should be minimal. Based on your August 17, 2012, letter, the NRC has determined that there is ample justification to conclude that the ASME Code Symbol Stamps and ASME Certification Mark with code-specific designators are equivalent with respect to their certification of compliance with the Code. As such, this permits the NRC to move forward with any regulatory activities necessary to permanently resolve the equivalency issue. The NRC will provide additional details regarding this issue in the proposed rule regarding the IBR of the aforementioned ASME Code edition and addenda which will be issued in the near future.

The NRC is committed to the safe and secure operation of all U.S. nuclear power plants, while at the same time promoting the effective and efficient regulation of NRC applicants and licensees. We will continue to work with all stakeholders to ensure that the concerns discussed in this letter are addressed properly.

Sincerely,

/RA by Michael R. Johnson for/

R. W. Borchardt
Executive Director
for Operations

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Executive Director
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*E-mail concurrence

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