

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC-2009-0359]

RIN 3150-A172

Approval of American Society of Mechanical Engineers' Code Cases

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guides; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment three draft regulatory guides (DG), DG-1230, "Design, Fabrication and Materials Code Case Acceptability, ASME Section III"; DG-1231, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1"; and DG-1232, "Operation and Maintenance code Case, Acceptability, ASME OM Code." The subject DGs list the Code Cases that the NRC has approved for use by applicants and licensees. Code Cases provide an acceptable voluntary alternative to the mandatory American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (BPV) Code and Operation and Maintenance (OM) of nuclear power plant provisions approved by the NRC.

DATES: Submit comments by September 9, 2013. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and

suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- **Federal rulemaking Web site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2009-0359**. Address questions about NRC dockets to Carol Gallagher; telephone: 301-492-3668; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **Mail comments to:** Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

For additional direction on accessing information and submitting comments, see “Accessing Information and Submitting Comments” in the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Wallace E. Norris, telephone: 301-251-7650, e-mail: Wallace.Norris@nrc.gov; or Hector Rodriguez-Luccioni, telephone: 301-251-7685 or e-mail: Hector.Rodriguez-Luccioni@nrc.gov. Both of the Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID **NRC-2009-0359** when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID **NRC-2009-0359**.
- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may access publicly available documents online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "[ADAMS Public Documents](#)" and then select "[Begin Web-based ADAMS Search](#)." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

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B. Submitting Comments

Please include Docket ID **NRC-2009-0359** in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Discussion

The NRC is issuing for public comment three DGs in the NRC's "Regulatory Guide" series. In a notice of proposed rulemaking, "Approval of American Society of Mechanical Engineers' Code Cases" (RIN 3150-A172; NRC-2009-0359), published elsewhere in the Proposed Rules section of today's *Federal Register* (the "underlying proposed rule"), the NRC is proposing to incorporate by reference these three DGs into the Commission's regulations at § 50.55a of Title 10 of the *Code of Federal Regulations* (10 CFR). The underlying proposed rule would allow nuclear power plant applicants and licensees, and applicants for standard

design certifications, and standard design approvals to use the Code Cases listed in these three DGs as alternatives to requirements in those Editions and Addenda of the ASME BPV and OM Codes which the NRC has incorporated by reference into 10 CFR 50.55a.

III. Description of Draft Regulatory Guides

Code Cases provide ASME approved voluntary alternatives to the BPV and OM Codes. The DGs are incorporated by reference in 10 CFR 50.55a. The NRC-approved Code Cases provide an acceptable voluntary alternative to the mandatory ASME Code provisions, but all of the provisions of a Code Case must be used, with any identified limitations or modifications, if implemented by an applicant or licensee. The NRC approves Code Cases in the three DGs described below regarding the construction, in-service inspection, and in-service testing of nuclear power plant components.

The DG entitled, "Design, Fabrication and Materials Code Case Acceptability, ASME Section III," is temporarily identified by its task number, DG-1230 (ADAMS Accession No. ML102590003). The DG-1230 is proposed Revision 36 of Regulatory Guide 1.84. Revision 35 of Regulatory Guide 1.84 was published in October 2010 (ADAMS Accession No. ML101800532).

The DG entitled, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1," is temporarily identified by its task number, DG-1231 (ADAMS Accession No. ML102590004). The DG-1231 is proposed Revision 17 of Regulatory Guide 1.147. Revision 16 of Regulatory Guide 1.147 was published in October 2010 (ADAMS Accession No. ML101800536).

The DG entitled, "Operation and Maintenance code Case, Acceptability, ASME OM Code," is temporarily identified by its task number, DG-1232 (ADAMS Accession No.

ML102600001). The DG-1232 is proposed Revision 1 of Regulatory Guide 1.192. Revision 0 of Regulatory Guide 1.192 was published in June 2003 (ADAMS Accession No. ML030730430).

The DG-1230 lists the new and revised ASME BPV Section III, “Rules for Construction of Nuclear Power Plant Components,” Code Cases that the NRC has approved for use. The DG-1231 lists the new and revised ASME BPV Section XI, “Rules for Inservice Inspection of Nuclear Power Plant Components,” Code Cases that the NRC has approved for use. The new and revised OM Code Cases that the NRC has approved for use are listed in DG-1232, “Operation and Maintenance Code Case Acceptability, ASME OM Code.” For these regulatory guide revisions, the NRC reviewed the Code Cases listed in Supplements 1 through 10 to the 2007 Edition of the ASME BPV Code and the 2002 through 2006 Addenda of OM Code.

IV. Regulatory Analysis

The regulatory analysis for the underlying proposed rule also addresses these three DGs. Therefore, the NRC did not prepare a separate regulatory analysis for these DGs. The NRC is proposing to incorporate by reference these DGs into 10 CFR 50.55a, “Codes and standards” in of the aforementioned proposed rulemaking published elsewhere in the Proposed Rules section of today’s *Federal Register*.

V. Backfitting and Issue Finality

These regulatory guides would approve for use (at the option of nuclear power plant applicants and licensees) the ASME Code Cases listed in the applicable regulatory guide. In some cases, the NRC’s approval is conditioned on meeting certain requirements or prerequisites (“conditions”). The NRC is proposing to incorporate by reference these DGs, with

conditions, into 10 CFR 50.55a, Codes and standards, in the aforementioned proposed rulemaking published elsewhere in the Proposed Rules section of today's *Federal Register*.

These DGs, if finalized, do not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and are not otherwise inconsistent with the issue finality provisions in 10 CFR Part 52, "Licenses, Certifications and Approvals for Nuclear Power Plants." The backfitting and issue finality considerations for these regulatory guides are addressed in the *Federal Register* notice for the underlying proposed rule, and introduces no new backfitting or issue finality matters not already addressed in that *Federal Register* notice. Therefore, the NRC's consideration of backfitting and issue finality matters for the underlying proposed rule also serves as the NRC's consideration of the same backfitting and issue finality matters for the issuance of these DGs.

In addition, these DGs identify NRC-approved ASME Code Cases which applicants and licensees may voluntarily utilize as way of meeting the NRC requirements in 10 CFR 50.55a. An applicant's and/or licensees' voluntary application of an approved Code Case does not constitute backfitting, inasmuch as there is no imposition of a new requirement or new position. Similarly, voluntary application of an approved Code Case by a 10 CFR Part 52 applicant or licensee does not represent NRC imposition of a requirement or action which is inconsistent with any issue finality provision in 10 CFR Part 52. Therefore, the NRC concludes that these DGs, if finalized, do not constitute backfitting as defined in 10 CFR 50.109 and are not otherwise inconsistent with the issue finality provisions in 10 CFR Part 52.

Dated at Rockville, Maryland, this 29th day of May, 2013.

For the Nuclear Regulatory Commission.

/RA/

Thomas H. Boyce, Chief,
Regulatory Guide Development Branch,
Division of Engineering,
Office of Nuclear Regulatory Research.