ML17188A001

Rulemaking at the NRC

July 17, 2017



Agenda



- Overview of the rulemaking process
- Status of active ASME rulemakings
- Incorporation by reference
- Tips for submitting effective comments
- Additional resources

The Reg Map

Informal Rulemaking

Step One

Initiating **Events**

Agency Initiatives

Ariency initiatives for rulemaking originate from such things as

- . Agency priorities and plans
- · New technologies
- Accidents

Required Reviews

Statutory Mandates

Recommendations from Other Agencies/External Groups/States/Federal **Advisory Committees**

Petitions

OMB Prompt Letters

Step Two

Determination Whether a Rule Is Needed

Administrative Procedure Act Provisions

Under the Administrative Procedure Act provisions that are included as part of the Freedom of Information Act at 5 U.S.C. 552, agencies are required to publish in the Federal

- Substantive rules of general applicability
- · Interpretive rules
- Statements of general policy • Rules of procedure
- . Information about forms Information concerning
- agency organization and methods of operation

 - · General statements of policy
 - Rules of agency organization, procedure, or practice . Nonsignificant rules for which
 - the agency determines that public input is not warranted

Note: Even if an exemption applies under the Administrative Procedure Act provisions, other statutory authority or agency policy may require that proposed rulemaking procedures be followed.

Using The Reg Map

The Reg Map is based on general requirements. In some cases, more stringent or less stringent requirements are imposed by statutory provisions that are agency specific or subject matter specific. Also, in some cases more stringent requirements are imposed by agency policy.

In a typical case, a rulemaking action would proceed from step one through step nine with a proposed rule and a final rule.

However, if a rulemaking action is exempt from the proposed rulemaking procedures under the Administrative Procedure Act provisions (explained under step three) or under other statutory authority, an agency may:

• promulgate a final rule omitting steps three

Step Three

Preparation of **Proposed Rule**

Proposed Rule

A notice of proposed rulemaking proposes to add, change, or delete regulatory text and contains a request for public comments.

Administrative Procedure Act Provisions

Under the Administrative Procedure Act provisions at 5 U.S.C. 553, rules may be established only after roposed rulemaking procedures steps three through six) have beer followed, unless an exemption applies. The following are exempted:

- · Rules concerning military or
- foreign affairs functions · Rules concerning agency
- management or personnel • Rules concerning public property, loans, grants, benefits, or contracts
- Interpretive rules
- Rules published on an emergency basis

Optional Supplementary Procedures to Help Prepare a Proposed Rule

Advance Notice of Proposed Rulemaking An advance notice of proposed rulemaking requests information

needed for developing a proposed rule

Negotiated Rulemaking

Negotiated rulemaking is a mechanism under the Negotiated Rulemaking Act (5 U.S.C. 561-570) for bringing together representatives of an agency and the various interests to negotiate the text of a proposed rule.

Step Four

OMB Review of **Proposed Rule**

OMB Review Under Executive Order 12866

OMB reviews only those rulemaking

Independent agencies are exempt from OMB review.

Step Five

Publication of Proposed Rule

Administrative Procedure Act Provisions

The Administrative Procedure Act provisions at 5 U.S.C. 553 require proposed rules to be published in the Federal Register.

Step Six

Public Comments

Comments

Under the Administrative Procedure Act provisions of 5 U.S.C. 553, an agency must provide the public the opportunity to submit written comments for consideration by the

As required by Public Law No. 107-347, agencies must provide for submission of comments by electronic means and must make available online the comments and other materia included in the rulemaking docket under 5 U.S.C. 553 (d).

Executive Order 12866 established 60 days as the standard for the comment period

The holding of a public hearing is discretionary unless requi statute or agency policy.

Specific Analyses for Steps Three and Seven

Regulatory Planning and Review (E.O. 12866)

Would the rule have a \$100 million annual impact, raise

Regulatory Flexibility Act (5 U.S.C. 601-612)

→ If yes Is a notice of proposed rulemaking required by law? Would the rule "have a significant economic impact on a substantial number of small entities"? Prepare regulatory flexibility analysis. Note: Under limited circumstances analyses also are required for certain interpretive rules

Paperwork Reduction Act (44 U.S.C. 3501-3520)

Does the rule contain a "collection of information" Prenare information collection clearance

Unfunded Mandates Reform Act (2 U.S.C. Chs. 17A, 25)

Does the rulemaking process include a proposed rule? -> If yes Does the rule include any Federal mandate that may result in the expenditure (direct costs minus direct savings) by State, local, and tribal governments, in the aggregate, or by → and ves Prepare unfunded mandates analysis the private sector, of \$100 million in any one year (adjusted annually)? (unless an exclusion applies)

Federalism (E.O. 13132)

Is the rule a discretionary rule that has federalism impli-cations and imposes substantial unreimbursed direct compliance costs on State and local governments? Prepare federalism summary impact statement Does the rule have federalism implications and preempt State law?

Indian Tribal Governments (E.O. 13175)

Is the rule a discretionary rule that has tribal implications and imposes substantial unreimbursed direct compliance costs on Indian Iribal governments? Prepare tribal surnmary impact statement

Step Seven

Preparation of Final Rule, **Interim Final** Rule, or Direct **Final Rule**

Final Rule

A final rule adds, changes, deletes, or affirms regulatory text.

Special Types of Final Rules

Interim Final Rule

An interim final rule adds, changes or deletes regulatory text and contains a request for comments The subsequent final rule may make changes to the text of the interim final rule.

Direct Final Rule

A direct final rule adds, changes or deletes regulatory text at a specified future time, with a duty to withdraw the rule if the agency receives adverse comments within the period specified by the agency.

Step Eight

OMB Review of Final Rule, **Interim Final** Rule, or Direct Final Rule

OMR Review Under Executive Order 12866

OMB reviews only those rulemaking actions determined to be significant."

Independent agencies are exempt from OMB review

Step Nine

Publication of Final Rule, Rule, or Direct **Final Rule**

Congressional Review Act (5 U.S.C. 801-808)

An agency must submit most final. rules, interim final rules, and direct final rules, along with supporting information, to both houses of Congress and the General Accounting Office before they can take effect.

Major rules are subject to a delayed effective date (with certain exceptions).

Action by Congress and the President could have an impact on the rule.

Administrative Procedure Act Provisions

Under the Administrative Procedure Act provisions that are included as part of the Freedom of Information Act at 5 U.S.C. 552, agencies are required to publish final rules, inter im final rules, and direct final rules in the Federal Register.

Federal Register Act (44 U.S.C. 1501-1511)

The Federal Register Act at 44 U.S.C. 1510 (implemented at 1 CFR 8.1) requires rules that have general applicability and legal effect to be published in the Code of Federal Regulations

Drafting Requirements for Rulemaking **Documents**

Regulatory Planning and Review (E.O. 12866)

Rulemaking documents must compl with the specified regulatory phi-losophy and principles of regulation

Civil Justice Reform (E.O. 12988)

Rulemaking documents must be written in clear language designed to help reduce litigation.

Agendas for **Rules Under** Development or Review

Unified Regulatory Agenda

The Unified Regulatory Agenda provides information concerning agency rules under development

The Unified Regulatory Agenda is published in the Federal Register in the spring and fall of each year.

Regulatory Plan

The Regulatory Plan provides

Rulemaking Process



Identify need for rulemaking

It has been NRC's practice to use ASME codes to establish requirements for nuclear power plants.

IBR 2015-2017 Editions

IBR Code Case RGs (Rev. 38)

Regulatory (Technical)

Basis

Foundation of effective rulemaking

IBR Code Case RGs (Rev. 37)

Proposed Rule

- Draft rule text
- Public meeting75 day public
- comment period (typically)

IBR 2009-2013 Editions and Addenda

Final Rule

Final rule text

Opportunities for public participation

Rulemakings



Recently Completed:

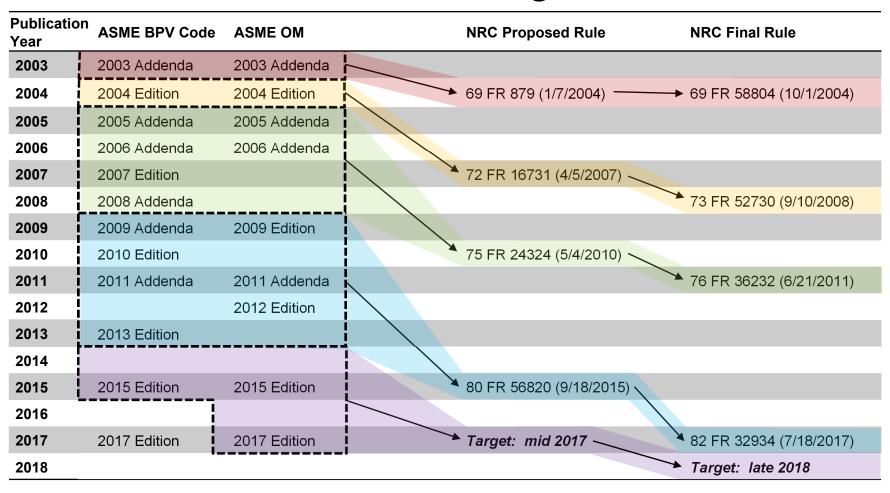
 Final Rule: Incorporate by reference ASME BPV/OM 2009 – 2013 Editions/Addenda (RIN 3150-AI97, Docket ID NRC-2011-0088)

Ongoing:

- Final Rule: Incorporate by reference ASME Code Case RGs (RG 1.84, Rev. 37; RG 1.147, Rev. 18; RG 1.192, Rev 2) (RIN 3150-AJ13, Docket ID NRC-2012-0059)
- Proposed Rule: Incorporate by reference ASME 2015 2017 Editions (RIN 3150-AJ74, Docket ID NRC-2016-0082)
- Proposed Rule: Incorporate by reference ASME Code Case RGs (RG 1.84, Rev. 38; RG 1.147, Rev. 19; RG 1.192, Rev 3) (RIN 3150-AJ93, Docket ID NRC-2017-0024)

Timeline – Edition/Addenda Rulemakings





Timeline – Code Case RG Rulemakings



Publication Year	ASME BPV Code Case Supplements	NRC Proposed Rule	NRC Final Rule	RG 1.84	RG 1.147	RG 1.192*
2005	4 5 6 7		70 FR 56809 (9/29/2005)	Rev. 33	Rev. 14	
2006	8 9 10 11	71 FR 62942 (10/27/2006)				
2007	0 1 2 3		72 FR 71750 (12/19/2007)	Rev. 34	Rev. 15	
2008	4 5 6 7					
2009	8 9 10 11 0	[*] 74 FR 26303 (6/2/2009)				
2010	1 2 3 4		75 FR 61321 (10/5/2010)	Rev. 35	Rev. 16	
2011	5678					
2012	9 10 11					
2013	0 1 2 3	78 FR 37886 (6/24/2013) N				
2014	4 5 6 7		79 FR 65776 (11/5/2014)	Rev. 36	Rev. 17	Rev. 1
2015	0 1 2 3 4					
2016	5 6 7	81 FR 10780 (3/2/2016)				
2017			Target: mid 2017	Rev. 37	Rev. 18	Rev. 2
2018		Target: early 2018				
2019			Target: early 2019	Rev. 38	Rev. 19	Rev. 3

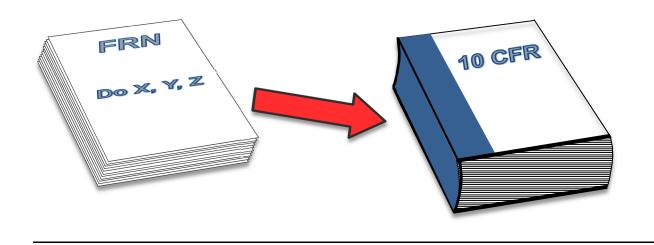
^{*} Scope of RG 1.192 Revisions (OM Code Editions/Addenda)

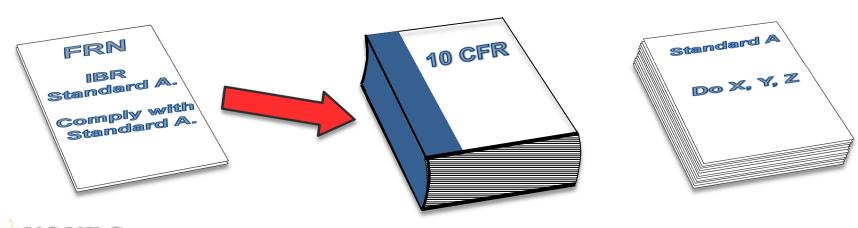
Rev. 1: 2004 Edition, 2006 Addenda

Rev. 2: 2009 Edition, 2011 Addenda, 2012 Edition

Rev. 3: 2015 Edition, 2017 Edition

What is incorporation by reference?







TIPS FOR SUBMITTING EFFECTIVE COMMENTS*

Overview

A comment can express simple support or dissent for a regulatory action. However, a constructive, information-rich comment that clearly communicates and supports its claims is more likely to have an impact on regulatory decision making.

These tips are meant to help the public submit comments that have an impact and help agency policy makers improve federal regulations.

Summary

- ✓ Read and understand the regulatory document you are commenting on
- ✓ Feel free to reach out to the agency with questions
- ✓ Be concise but support your claims
- Base your justification on sound reasoning, scientific evidence, and/or how you will be impacted
- ✓ Address trade-offs and opposing views in your comment
- ✓ There is no minimum or maximum length for an effective comment
- ✓ The comment process is not a vote one well supported comment is often more influential than a thousand form letters

Detailed Recommendations

- Comment periods close at 11:59 eastern time on the date comments are due begin work well before the deadline.
- Attempt to fully understand each issue; if you have questions or do not understand a part of the regulatory document, you may ask for help from the agency contact listed in the document.

Note: Although the agency contact can answer your questions about the document's meaning, official comments must be submitted through the comment form.

- Clearly identify the issues within the regulatory action on which you are commenting. If you
 are commenting on a particular word, phrase or sentence, provide the page number, column,
 and paragraph citation from the federal register document.
 - a. If you choose to comment on the comments of others, identify such comments using their comment ID's before you respond to them.

United States Nuclear Regulatory Commission

Protecting People and the Environment

https://www.regulations.gov/docs/Tips_For_Submitting_Effective_Comments.pdf





Additional Resources



- NRC: Planned Rulemaking Activities
- Regulations.gov
- eCFR
- RegInfo Mobile App

NRC: Planned Rulemaking Activities





https://www.nrc.gov/ reading-rm/doc-collections/ rulemaking-ruleforum/active/ RuleIndex.html

NRC: Planned Rulemaking Activities





NRC: Planned Rulemaking Activities



Mechanical Engineers (ASME) 2015 Edition of the Boiler and Pressure Vessel Code (BPV) and the 2015 Edition of the Operations Maintenance Code (OM), and the 2017 Edition of the ASME OM Code. The NRC has a well-established practice of approving and mandating the use of certain parts of editions and addenda of ASME Codes in 10 CFR 50.55a through the rulemaking process of incorporation by reference. This practice increases consistency across the industry and demonstrates that the NRC will continue to support the use of the most updated and technically sound techniques developed by the ASME to provide adequate protection to public. This rulemaking also enhances the efficiency and effectiveness of the NRC's regulations by making use of current voluntary consensus standards and is consistent with applicable requirements of the National Technology Transfer and Advancement Act. T	Rule Information			Pre-Rule Proposed Rule Final Rule			
Associated PRM Numbers: Rule Phase: Proposed Rule Rule Type: Non-discretionary Area of Regulatory Responsibility NRC Office: Office of Nuclear Reactor Regulation (NRR) Status: Funded Signature Authority: Director of the Office of Nuclear Reactor Regulation Associated Guidance Documents: Abstract: This rule would amend the Nuclear Regulatory Commission's (NRC) regulations to incorporate by reference the American Society Mechanical Engineers (ASME) 2015 Edition of the ASME OM Code. The NRC has a well-established practice of approving and mandating the use of certain parts of editions and addenda of ASME Codes in 10 CFR 50.55a through the rulemaking process of incorporation by reference. This practice increases consistency caross the industry and demonstrates that the NRC will confinue to support the use of the most updated and technically sound techniques developed by the ASME to provide adequate protection to public. This rulemaking also enhances the efficiency and effectiveness of the NRC's regulations by making use of current voluntar consensus standards and is consistent with applicable requirements of the NRC's regulations by making use of current voluntar consensus standards and is consistent with applicable requirements of the NRC's regulations by making use of current voluntar consensus standards and is consistent with applicable requirements of the National Technology Transfer and Advancement Act. T was revised to address that the rulemaking entitled, "2017 Edition of the American Society of Mechanical Engineers Operations at	Title	American Society of Mechanical Engineers 2015 - 2017 Code Editions Incorporation by Reference					
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NRC Contacts Name A Phone A Email	NDO O	Maintenance Code" (RIN 3150-AJ90; NRC-2017-0019)	was added to the scope of	this rulemaking.			

Regulations.gov





To find information about	Search for docket ID
ASME 2009 – 2013 rulemaking	NRC-2011-0088
ASME 2015 – 2017 rulemaking	NRC-2016-0082
ASME Code Case RGs rulemaking (Rev. 37)	NRC-2012-0059
ASME Code Case RGs rulemaking (Rev. 38)	NRC-2017-0024

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- · Agency List
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Related Resources

The Code of Federal Regulations (CFR) annual edition is the codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government produced by the Office of the Federal Register (OFR) and the Government Publishing Office.

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[A2]

ELECTRONIC CODE OF FEDERAL REGULATIONS

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e-CFR data is current as of June 6, 2017

Title $10 \rightarrow \text{Chapter I} \rightarrow \text{Part } 50 \rightarrow \$50.55a$

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Title 10: Energy

PART 50-DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

§50.55a Codes and standards.

(a) Documents approved for incorporation by reference. The standards listed in this paragraph have been approved for incorporation by reference by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. The standards are available for inspection at the NRC Technical Library, 11545 Rockville Pike, Rockville, Maryland 20852; telephone: 301-415-6239; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to http://www.archives.gov/federal-register/cfr/ibrlocations.html.

(1) American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016; telephone:

1-800-843-2763; http://www.asme.org/Codes/.

(i) ASME Boiler and Pressure Vessel Code, Section III. The editions and addenda for Section III of the ASME Boiler and Pressure Vessel Code are listed below, but limited to those provisions identified in paragraph (b)(1) of this section.

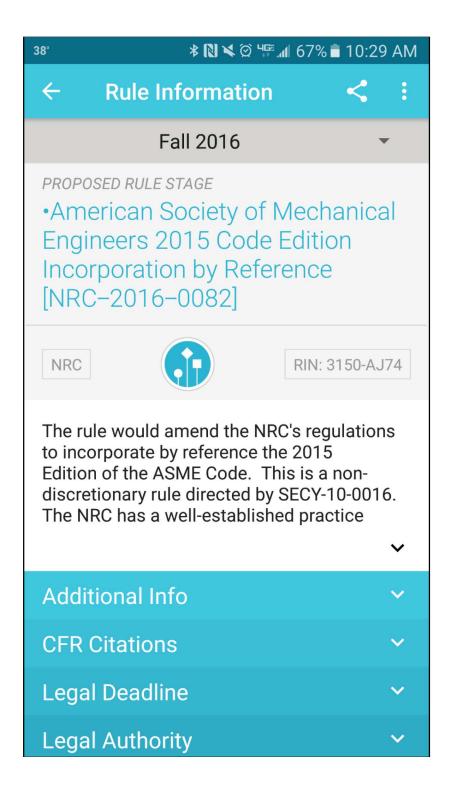
- (A) "Rules for Construction of Nuclear Vessels:"
- (1) 1963 Edition,
- (2) Summer 1964 Addenda,
- (3) Winter 1964 Addenda.
- (4) 1965 Edition.
- (5) 1965 Summer Addenda.
- (6) 1965 Winter Addenda,
- (7) 1966 Summer Addenda.
- (8) 1966 Winter Addenda.
- (9) 1967 Summer Addenda.
- (10) 1967 Winter Addenda,
- (11) 1968 Edition,
- (12) 1968 Summer Addenda,
- (13)1968 Winter Addenda







RegInfo Mobile App





Acronyms



ASME American Society of Mechanical Engineers

BPV Boiler and Pressure Vessel Code

CFR Code of Federal Regulations

FR Federal Register

FRN Federal Register notice

IBR Incorporation by Reference

NRC Nuclear Regulatory Commission

OM Operation and Maintenance

RG Regulatory Guide

RIN Regulation Identifier Number