

Modified Rulemaking Process for the American Society of Mechanical Engineers (ASME) Code Cases and Code Editions Rules

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Agenda/Discussion Topics

- Meeting Purpose
- Background
 - EMBARK Report and Improvements for 10 CFR 50.55a
 - Direct Final Rule Procedure
- Rearrangement of Rule Scope
- ASME Code Editions & Code Cases Rule
- ASME Unconditioned Code Cases Direct Final Rule
- Q&A

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Meeting Purpose

- **Purpose: To provide an overview of the modified process for ASME rulemakings.**
- In accordance with Section 8 of Executive Order 12866, the NRC cannot disclose to the public any draft regulatory action prior to completion of Office of Information and Regulatory Affairs' (OIRA's) significance determination and review.
- We will not be discussing specific code cases, code editions, or conditions.

Improvements for 10 CFR 50.55a

- 06/2020 - EMBARK Venture Studio report on 10 CFR 50.55a Project released ([ML20153A752](#))
 - Goal was to evaluate how to streamline the way NRC regulates using 10 CFR 50.55a
 - Three recommendations for management consideration:
 - Relax the requirement to update ISI and IST Programs to every 10 years
 - **Institute streamlined rules (Direct Final Rules) for unconditionally approved code cases**
 - Decrease the frequency of code edition rulemakings
- 03/2021 – SECY-21-0029 “Rulemaking Plan on Revision of Inservice Testing and Inservice Inspection Program Update Frequencies Required in 10 CFR 50.55a” ([ML20273A286](#))
- 11/2021 – SRM-SECY-21-0029 ([ML21312A490](#))
 - Commission approved the ISI and IST program update frequencies
 - Commission requested NRC staff to move expeditiously to implement the remaining recommendations

Direct Final Rule (DFR)*

- Used for non-controversial rulemakings
- Allows issuance of a rule without the agency going through the review process twice (i.e., proposed and final rule stages)
- Maintains the opportunity for the public to provide input



* More information about the NRC's use of direct final rules can be found here: <https://www.nrc.gov/about-nrc/regulatory/rulemaking/rulemaking-process/direct-final-rule.html>

DFR Procedure

- The NRC publishes a DFR and companion proposed rule (CPR) in the Federal Register (FR). The comment period begins.
- The DFR will contain language that states that any comments received will be considered as comments on the CPR.
- If no significant adverse comments are received, the NRC will publish a subsequent FR notice confirming the effective date of the rule. Any comments received that are not significant and adverse will be acknowledged.
- If at least one significant adverse comment is received during comment period, the NRC will publish a document in the FR that **withdraws the DFR**, and will publish a subsequent final rule that addresses the comment(s) if the NRC decides to continue moving forward with rulemaking.

Significant Adverse Comment

- A **significant adverse comment** is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.



Former ASME Code Rulemaking Process

Previous rulemaking process involved two separate rules:

- **ASME Code Cases:** Incorporates by reference (IBR) regulatory guides to approve new, revised, and reaffirmed code cases published by the ASME
 - RG 1.84, "Design, Fabrication, and Materials Code Case Acceptability, ASME Section III"
 - RG 1.147, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1"
 - RG 1.192, "Operation and Maintenance Code Case Acceptability, ASME OM Code"
- **ASME Code Edition:** IBR the latest editions of the ASME BPV and OM Codes

Current ASME Code Rulemaking Process

- Modified rulemaking process will involve one rule (proposed rule/final rule) and one DFR
 - Approval of the latest edition(s) of the ASME codes and new, revised, and reaffirmed code cases (Rule)
 - IBR the latest edition(s) of the ASME BPV and OM Codes
 - IBR revisions to existing RGs 1.84, 1.147, and 1.192 to include code cases that are approved with condition(s) or are otherwise potentially controversial
 - Revisions to existing RG 1.193 to include code cases not approved for use
 - Approval of ASME Unconditioned Code Cases (DFR)
 - IBR of new RG 1.262, “ASME Code Cases Approved For Use Without Conditions,” to 10 CFR 50.55a
 - Revisions to RG 1.262 to include code cases that are approved for use without conditions/appropriate for the DFR process

Rearrangement of rule scope

Former process:

ASME Code Cases Rule*		ASME Code Editions Rule
Code cases approved for use without conditions	Code cases approved for use with conditions	BPV (sections III and XI) and OM Code



Current process:

ASME Unconditioned Code Cases DFR	ASME Code Editions and Code Cases Rule*	
Code cases approved for use without conditions	Code cases approved for use with conditions	BPV (sections III and XI) and OM Code

* Code cases that not approved for use are handled as well, but they are not IBR'ed

ASME Code Editions & Code Cases Rule

Rule Contents

- ASME Boiler and Pressure Vessel Code (Sections III and XI), and Operation and Maintenance Code
- Code Cases that:
 - The NRC proposes to condition
 - The NRC believes are potentially controversial code cases that could result in significant and adverse comments

Rulemaking Process

- NRC develops/publishes proposed rule
- 60-day public comment period with a public meeting
- NRC evaluates comments and makes necessary changes to the final rule
- Final rule is published; Rule is effective 30 days after publication of the final rule

ASME Unconditioned Code Cases DFR

Rule Contents

- Code cases that meet the following criteria
 - Unconditioned
 - Non-controversial
 - Not likely to result in significant or adverse comments*

Rulemaking Process

- NRC develops/publishes DFR and CPR
- 60-day public comment period
- NRC evaluates any comments received
- If no significant **and** adverse comments are received*, NRC confirms the effective date via FRN.
- Rule becomes effective 120 days after publication of the DFR

*If any comments received are significant **and** adverse, the NRC will withdraw the direct final rule (more information on the next slide)

ASME Unconditioned Code Cases DFR (con't)

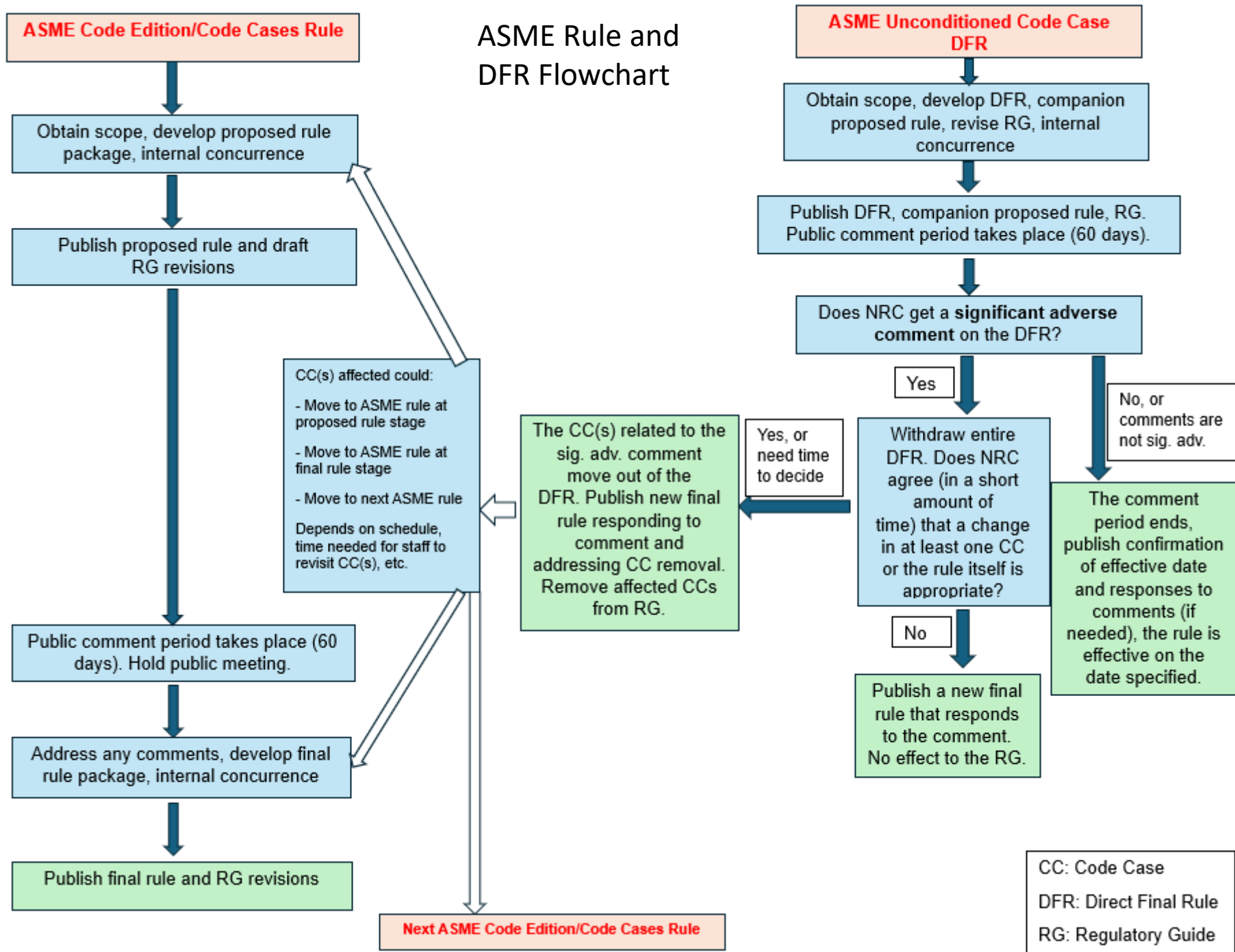
Comments received (if any) are not significant and adverse comments

- NRC reviews all comments and develops responses (if needed)
- Confirmation FRN is published confirming effective date of the rule and includes comment responses (if any)

Any comments received are significant and adverse comments

- **NRC withdraws the entire direct final rule via a withdrawal FRN**
- NRC reviews comments and makes necessary changes to the rule package, including potentially moving specific code cases to the ASME rule
- New final rule package must be internally approved before publication
- Significant and adverse comment(s) will delay approval of code cases

ASME Rule and DFR Flowchart



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Question & Answer