

RULEMAKING ISSUE  
NEGATIVE CONSENT

SECY-00-0100

May 4, 2000

FOR: The Commissioners  
FROM: William D. Travers  
Executive Director for Operations  
SUBJECT: INITIATION OF NRR-SPONSORED RULEMAKING CODES AND STANDARDS

- [PURPOSE:](#)
- [DISCUSSION:](#)
- [RESOURCES:](#)
- [COORDINATION:](#)
- [RECOMMENDATION:](#)

## **PURPOSE:**

To obtain Commission approval to proceed with rulemaking to amend [10 CFR 50.55a](#), "Codes and Standards," in accordance with the attached rulemaking plan.

## **DISCUSSION:**

NRR requests approval to initiate rulemaking in order to amend NRC regulations in 10 CFR 50.55a to incorporate by reference the following: (1) the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Division 1 rules of Section III, "Rules for Construction of Nuclear Power Plant Components," of the American Society of Mechanical Engineers *Boiler and Pressure Vessel Code* (ASME B&PV Code); (2) the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Division 1 rules of Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components," of the ASME B&PV Code; and (3) the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of the ASME *Code for Operation and Maintenance of Nuclear Power Plants* (OM Code).

New editions of the ASME Code are issued every 3 years and addenda to the editions are issued on an annual basis. Section 50.55a was last amended to incorporate by reference the 1995 Edition, up to and including the 1996 Addenda, in the *Federal Register* (64 FR [EXIT](#) 51370) dated September 22, 1999. It has been the policy of the Commission to update this section of the regulations to keep current the ASME Code editions and addenda incorporated by reference. Rulemaking to incorporate by reference the most recent edition and addenda of the ASME Code should be initiated in order to ensure timely incorporation by reference of the most recent Code ASME edition and addenda into the regulations.

In the staff requirements memorandum ([SRM](#)) on SECY-00-0011, dated April 13, 2000, the Commission disapproved the staff's recommendation to change the requirement in 10 CFR 50.55a for licensees to update their inservice inspection and inservice test programs to the latest ASME Code every 120 months. The Commission approved Option 2 of [SECY-00-0011](#), which maintains the current requirement that licensees update their inservice inspection and inservice testing programs every 120 months to the latest edition of the ASME Code that is incorporated by reference in NRC regulations.

The ASME B&PV Code and the ASME OM Code that will be incorporated by reference will provide updated rules for the construction of light-water-cooled nuclear power plant components and for the inservice inspection and inservice testing of those components. Approval of the proposed amendment would permit the use of the most recent methods for construction, inservice inspection, and inservice testing of nuclear power plant components. Timely endorsement of the most recent edition and addenda of the ASME Code may reduce the number of relief requests by licensees, thereby increasing efficiency and effectiveness and reducing unnecessary regulatory burden while maintaining safety. Endorsement of the most recent edition and addenda should also promote public confidence. Therefore, the NRC staff requests authorization to initiate the proposed rulemaking. The plan for proceeding with the rulemaking to amend 10 CFR 50.55a is provided in the attachment.

## **RESOURCES:**

The NRC currently expends resources of approximately 1 full-time equivalent (FTE) position on an annual basis to (1) review new ASME Code addenda issued every year and new ASME Code editions issued every 3 years and (2) prepare rulemaking to incorporate by reference those new ASME Code editions and addenda into the NRC regulations. Approximately 3.5 FTEs spread over a 24-month period will be required to conduct this rulemaking effort. Further, the staff estimates \$150,000 in contractual support will be required to assist in the review. Resources to conduct these rulemaking activities are included in the budget.

## **COORDINATION:**

The Office of the General Counsel has no legal objection to this rulemaking plan.

The Office of the Chief Financial Officer has reviewed the rulemaking plan for resource implications and has no objections to it.

The Office of the Chief Information Officer has reviewed the rulemaking plan for information technology and information management implications and concurs in it.

## RECOMMENDATION:

The staff recommends that the Commission approve the plan to proceed with rulemaking to amend 10 CFR 50.55a as described in the attached rulemaking plan. The staff will initiate the subject rulemaking upon receipt of the SRM.

Staff requests action within 10 days. Action will not be taken until the SRM is received. We consider this action to be within the delegated authority of the EDO.

*/RA by Carl Paperiello Acting For/*

William D. Travers  
Executive Director for Operations

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Attachment: [Rulemaking Plan](#)

Accession Number: ML003695080

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ATTACHMENT

## RULEMAKING PLAN 10 CFR 50.55a, "CODES AND STANDARDS"

- [Background](#)
- [Existing Regulatory Requirements](#)
- [Proposed Amendment to Regulatory Requirement](#)
- [Separate Proposed Rule Change to 10 CFR 50.55a](#)
- [Impact on Licensees](#)
- [Benefits](#)
- [Office of the General Counsel \(OGC\) Legal Analysis](#)
- [Category of Rule](#)
- [Backfit Analysis](#)
- [Supporting Documents Needed](#)
- [Issuance by the Executive Director for Operations or the Commission](#)
- [Public Participation](#)
- [Resources](#)
- [Schedule](#)

### Background

The regulations in 10 CFR 50.55a require the use of Section III, Division 1, of the American Society of Mechanical Engineers *Boiler and Pressure Vessel Code* (ASME B&PV Code) for construction of nuclear power plant components; Section XI, Division 1, of the ASME B&PV Code for inservice inspection (ISI) of nuclear power plant components; and the ASME *Code for Operation and Maintenance of Nuclear Power Plants* (OM Code) for inservice testing (IST) of nuclear power plant components. New editions of the ASME Code are issued every 3 years and addenda to the editions are issued on an annual basis. It has been the policy of the Commission to update periodically 10 CFR 50.55a to keep current the ASME Code editions and addenda incorporated by reference.

### Existing Regulatory Requirements

At present, 10 CFR 50.55a incorporates by reference the following: (1) Section III, Division 1, of the ASME B&PV Code; (2) Section XI, Division 1, of the ASME B&PV Code; and (3) the ASME OM Code, to include editions through the 1995 Edition and addenda through the 1996 Addenda. Section 50.55a was last amended to incorporate by reference the 1995 Edition, up to and including the 1996 Addenda, in the *Federal Register* (64 FR 51370) dated September 22, 1999.

### Proposed Amendment to Regulatory Requirement

The proposed amendment to 10 CFR 50.55a will incorporate by reference the following: (1) the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Division 1 rules of Section III, "Rules for Construction of Nuclear Power Plant Components," of the ASME B&PV Code; (2) the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000

Addenda of Division 1 rules of Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components," of the ASME B&PV Code; and (3) the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of the ASME OM Code. This proposed amendment will permit use of the most recent ASME Code methods for the construction, ISI, and IST of components in nuclear power plants.

Cases in which significant differences exist between either the ASME B&PV Code or the ASME OM Code and staff positions, limitations or modifications to specific items in the ASME Code will be identified. Exceptions identified in the regulations to both the ASME B&PV Code and the ASME OM Code are minimized to the extent that NRC staff representatives on ASME Code committees can convey NRC concerns on specific issues to the committee members such that the committee will try to accommodate the NRC's concerns in the development of the ASME Code rules.

## **Separate Proposed Rule Change to 10 CFR 50.55a**

In the staff requirements memorandum (SRM) on SECY-00-0011, dated April 13, 2000, the Commission disapproved the staff's recommendation to change the requirement in 10 CFR 50.55a for licensees to update their ISI and IST programs to the latest ASME Code every 120 months. The Commission approved Option 2 of SECY-00-0011, which maintains the current requirement that licensees update their ISI and IST programs every 120 months to the latest edition of the ASME Code that is incorporated by reference in NRC regulations.

## **Impact on Licensees**

When commenting on the *Federal Register* notice dated April 27, 1999, the Nuclear Energy Institute estimated that it may cost a licensee up to \$1,500,000 every 10 years to update ISI and IST programs, revise procedures, and train personnel. The NRC staff notes that in some instances, implementing a new edition of the ASME Code can result in cost savings that offset the implementation costs. For example, more recent editions of the ASME Code may revise impractical requirements, or permit the use of new, more cost-effective methods for construction, ISI, and IST.

## **Benefits**

The proposed amendment, as delineated above, is expected to maintain the overall protection of public health and safety while revising the rules to be consistent with the latest methods for design, fabrication, installation, examination, testing, and inspection specified by the ASME Codes. Timely endorsement of the more recent ASME Code edition and addenda may reduce the number of relief requests submitted by licensees, thereby improving efficiency and effectiveness and reducing unnecessary regulatory burden. NRC endorsement of the most recent ASME Code edition and addenda should also increase public confidence in that we are endorsing the most recent ASME Code approved technologies and methods to be used for design, construction, ISI, and IST of nuclear power plants.

## **Office of the General Counsel (OGC) Legal Analysis**

The proposed rule would amend 10 CFR 50.55a to endorse (1) the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Section III of the ASME B&PV Code, (2) the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of Section XI of the ASME B&PV Code, and (3) the 1997 Addenda, the 1998 Edition, the 1999 Addenda, and the 2000 Addenda of the ASME OM Code. The Section III requirements would apply to the construction of new nuclear power plants, while the requirements in Section XI and in the OM Code would apply to ISI and IST of currently operating nuclear power plants. Consistent with existing requirements, licensees would be required to revise their ISI and IST programs at the end of their current 120-month interval to the ASME Code edition and addenda incorporated by reference 12 months prior to the start of the next 120-month interval.

At this time, OGC has not identified any legal objections to this rulemaking.

The staff will need to obtain approval for incorporation by reference of the relevant editions and addenda of the ASME B&PV Code and OM Code from the Office of the Federal Register. The Commission's proposal to endorse an industry consensus standard is consistent with the intent of the National Technology Transfer and Advancement Act of 1995. Nonetheless, in accordance with the law and Office of Management and Budget (OMB) Circular A-119, the Statement of Consideration should contain a statement requesting public comment regarding whether there are other national or international consensus standards that could be endorsed as an option to the ASME B&PV Code and OM Code.

The proposed rule will require preparation of an environmental assessment as it appears that there are no categorical exclusions in 10 CFR 51.22(c) that would apply to this rulemaking.

OGC does not believe that the proposed rule will constitute a backfit as defined in 10 CFR 50.109(a)(1). OGC believes that the correct basis for this determination is the same as the basis for the 1999 final rulemaking updating Section 50.55a (64 FR 51370), namely, that the 120-month updating requirement is a long standing part of the Commission's regulatory regime that licensees understood when they received their operating licenses. Despite our determination, OGC notes that nuclear power plant licensees disagreed with this rationale in their comments on the last 10 CFR 50.55a update rulemaking.

The proposed rule will require licensees to generate and maintain records on the implementation of the ASME Codes, including new procedures and new criteria. Accordingly, the rulemaking will require OMB review for purposes of the Paperwork Reduction Act.

## Category of Rule

This rulemaking is not considered a "major rule" because it will not cause a major increase in costs for licensees to update and implement ISI and IST programs, the proposed rule's annual effect on the economy will be less than \$100,000,000, and this rulemaking will not have a significant adverse effect on licensees' ability to compete with foreign-based utilities. The effect of this rulemaking is expected to be similar to that of the previous rulemaking on 10 CFR 50.55a (64 FR 51394) in which the NRC determined that the rulemaking was not a major rule and verified its determination with the Office of Information and Regulatory Affairs of OMB.

## Backfit Analysis

NRC regulations currently require licensees to update their ISI and IST programs every 120 months to the references incorporated by 10 CFR 50.55a 12 months prior to the start of a new 120-month interval. The staff does not anticipate that the proposed amendment will require the Commission's endorsement of new subsections or appendices or any other fundamental changes to the ASME B&PV Code. In the past, the NRC position has consistently been that 10 CFR 50.109 does not ordinarily require a backfit analysis of routine 10 CFR 50.55a updates.

## Supporting Documents Needed

A Paperwork Reduction Act clearance package will be forwarded to the OMB at the time the proposed amendment is forwarded to the *Federal Register* for publication as part of this rulemaking.

## Issuance by the Executive Director for Operations or the Commission

The staff intends to present the proposed rule for the Commission's approval.

## Public Participation

Interested parties will be invited to submit written comments for consideration on the proposed rule. Public comment on this rulemaking is expected.

## Resources

NRR Lead:	Stephen Tingen, Mechanical Engineer Components & Containment Reliability Section Mechanical and Civil Engineering Branch Division of Engineering
OGC Contact:	Geary Mizuno
Contractual Assistance:	The staff expects to use contractual assistance for the rulemaking. The staff estimates the contractual support level will cost \$150,000.

## Schedule

Review New Codes and Develop Rulemaking Package	Six months after rulemaking plan is approved by the Commission and the EDO
Office Concurrences	2 months
CRGR Concurrence	1 month
EDO Concurrence	1 month
Commission Approval	1 month
Publish Proposed Rule	1 month
Public Comment	3 months
Revise Rulemaking Package and Disposition Comments	3 months
Office Concurrences	1 month
ACRS Comments	1 month
CRGR Concurrence	1 month
EDO Concurrence	1 month
Commission Approval	1 month
Publish Final Rule	1 month (24 months after rulemaking plan is approved by the Commission and the EDO)