

# POLICY ISSUE INFORMATION

January 28, 2010

SECY-10-0016

FOR: The Commissioners

FROM: R. W. Borchardt  
Executive Director for Operations

SUBJECT: REDELEGATION OF AUTHORITY BY THE EXECUTIVE DIRECTOR  
FOR OPERATIONS TO THE DIRECTOR, OFFICE OF NUCLEAR  
REACTOR REGULATION, TO APPROVE TITLE 10 OF THE *CODE OF  
FEDERAL REGULATIONS* 50.55a RULEMAKINGS

PURPOSE:

To inform the Commission that the Executive Director for Operations (EDO) intends to redelegate his authority to approve certain rulemakings to the Director, Office of Nuclear Reactor Regulation (NRR). The rulemakings in question are those which amend Title 10 of the *Code of Federal Regulations* (10 CFR) 50.55a, "Codes and Standards," to incorporate by reference the latest revisions of the following:

- Editions and addenda of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (BPV Code), Section III and Section XI;
- Editions and addenda of the ASME Operations and Maintenance Code (OM Code);
- U.S. Nuclear Regulatory Commission (NRC) Regulatory Guide (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"; and
- RG 1.192, "Operation and Maintenance Code Case Acceptability, ASME OM Code"; which list NRC-approved code cases that provide alternatives to the requirements in the BPV and OM Codes.

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**BACKGROUND:**

ASME issues new editions of the BPV Code and the OM Code every 3 years, and issues addenda to the editions annually. It has been the Commission's policy to update 10 CFR 50.55a to incorporate by reference the ASME Code editions and addenda. ASME also publishes code cases quarterly for Section III and Section XI of the BPV Code and yearly for the OM Code. Code cases are alternatives to the requirements of the ASME BPV and OM Codes. The NRC lists the code cases that it finds to be acceptable or conditionally acceptable in NRC RGs, which are also incorporated by reference in 10 CFR 50.55a. Rules incorporating by reference these ASME Codes and related RGs are routine and do not constitute a question of policy.

**DISCUSSION:**

The NRC has a long-standing practice of incorporating by reference certain portions of Sections III and XI of the BPV Code requirements into 10 CFR 50.55a. Until 1976, the Commission approved the rulemakings to incorporate by reference these requirements and published them as final rules after the required public notice and comment period. On August 24, 1976, in its staff requirements memorandum (Agencywide Documents Access and Management System (ADAMS) Accession Number ML091470326) in response to SECY-76-389 (ADAMS Accession Number ML091480331), the Commission delegated the authority to approve the incorporation by reference of these rulemakings to the EDO as follows:

Issue proposed rules, and rules in final form, amending the Commission's regulations to incorporate by reference national codes and standards, including revised editions and addenda thereto, if the amendments are routine in nature and represent updating of basic codes and standards previously approved by the Commission for incorporation by reference.

In seeking this delegation of authority, the staff stated the following in SECY-76-389:

The development of codes and standards is a continuing process in which NRC staff is involved through membership on the various code writing committees. The NRC position on a given code or standard is known before action is taken by the Committee. If a case should arise in which a code or standard change is unacceptable to NRC, staff is generally in a position to preclude committee approval of such action. Because of this situation, in most cases updating of an individual national code or standard is routine and inherently has NRC staff approval.

While the delegation of authority to the EDO for the rulemakings related to the ASME Codes has resulted in a significant improvement in enacting these incorporation by reference rulemakings, it is widely regarded that there is still room for improvement in the timeliness of this process. Over the last 10 years, 10 CFR 50.55a rulemaking cycle times have ranged from 2 years to more than 4 years. The most recent 10 CFR 50.55a rulemaking took more than 4 years to complete. In response to ASME, industry, and public concerns, an inter-office

team from NRR, the Office of Nuclear Regulatory Research, the Office of New Reactors, the Office of the General Counsel (OGC), and the Office of Administration (ADM), recently completed a Lean Six Sigma review of the 10 CFR 50.55a rulemaking process. The purpose of this review was to establish a consistent and predictable 10 CFR 50.55a rulemaking process to reduce the current cycle time to 2 years while maintaining or improving quality. The Lean Six Sigma review developed fifteen recommendations to optimize the rulemaking process. The staff has either already implemented, or is working towards implementing each of these recommendations. One recommendation that evolved from this project was to redelegate approval authority for 10 CFR 50.55a rulemakings to the Director of NRR. Therefore, I intend to redelegate to the Director of NRR the authority to approve the incorporation by reference of these codes and standards because they are routine and non-policy in nature and could be handled more expeditiously than is the current practice. I believe that the following advantages would accrue upon such a re delegation of authority:

- A reduction in the cycle time of approximately 4 weeks, based on available historical data, for 10 CFR 50.55a rulemakings, thereby improving process efficiency consistent with the effectiveness objectives in the NRC Strategic Plan;
- A strengthening of organizational accountability at the office level consistent with the operational excellence objective in the NRC Strategic Plan;
- A reduction of a layer of review that, by experience, is repetitive of that performed by the Office Director;
- The elimination of redundant reviews by the Office of the EDO mailroom and technical staff.

Management Directive 9.17, "Organization and Functions: Office of the Executive Director for Operations," dated September 12, 1991, Section 9.17-04, states the limitations pertaining to the re delegation of authority by the EDO. The re delegation of the EDO's authority, except where expressly prohibited, is permitted as discussed in Section 9.17-043 of Management Directive 9.17. Unless otherwise directed, 10 working days after the issuance of this Commission paper, I will issue the enclosed memorandum delegating to the Director of NRR the authority to approve rulemakings incorporating by reference editions and addenda of the ASME BPV and OM Codes and rulemakings incorporating by reference NRC RGs listing NRC-approved ASME code cases. Only the Director or Acting Director of NRR may approve these rulemakings and the authority to do so may not be further re delegated. This delegation of authority will only apply to recurring 10 CFR 50.55a rulemakings pertaining to the ASME BPV Code, the OM Code, and the related RGs (i.e., the applicability will not extend to 10 CFR 50.55a(h), in which the NRC incorporates by reference the Institute of Electrical and Electronics Engineers (IEEE) Standard. 603, "IEEE Standard Criteria for Safety Systems for Nuclear Power Generating Stations", pertaining to protection and safety systems). This delegation applies only to those rulemakings that are routine in nature, contain no significant questions of policy, and represent the updating of basic codes and standards previously approved by the Commission for incorporation by reference.

In exercising this rulemaking authority, the Director of NRR shall seek the concurrences of all applicable NRC offices. NRR will continue to coordinate the development of these incorporation by reference rulemakings with other NRC offices through participation in interoffice working

groups, steering committees, and coordination meetings, as appropriate. Any disagreement causing an applicable NRC office to withhold its concurrence shall be referred to the EDO for resolution. In accordance with current rulemaking procedures, the proposed and final rulemaking packages will contain an authority citation; a notice informing the Commission that the proposed or final rule has been signed and will be forwarded to the Office of the Federal Register after a specified number of days, unless otherwise directed by the Commission; and an EDO Daily Note and Weekly Highlight. In accordance with Section 9.17-043 of Management Directive 9.17, I will transmit a copy of the enclosed memorandum specifying this redelegation to the Secretary of the Commission, with copies to the OGC; Office of Human Resources; and the Director of ADM. This redelegation of authority will be reflected in rulemaking guidance, as appropriate, including the next scheduled revision of Management Directive 6.3, "The Rulemaking Process."

COORDINATION:

The OGC has reviewed this paper and has no legal objection.

*/RA by Bruce S. Mallet Acting for/*

R. W. Borchardt  
Executive Director  
for Operations

Enclosure:  
Delegation of Authority Memorandum

TO: Eric J. Leeds, Director  
Office of Nuclear Reactor Regulation

FROM: R. W. Borchardt  
Executive Director for Operations

SUBJECT: DELEGATION OF AUTHORITY TO THE DIRECTOR, OFFICE OF  
NUCLEAR REACTOR REGULATION, TO APPROVE 10 CFR 50.55a  
RULEMAKINGS

I hereby delegate authority to the Director of the Office of Nuclear Reactor Regulation (NRR) to approve certain amendments to Title 10 of the *Code of Federal Regulations* (10 CFR) 50.55a, "Codes and Standards," pertaining to the incorporation by reference of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (BPV Code) and Operations and Maintenance Code (OM Code) and the U.S. Nuclear Regulatory Commission's (NRC's) regulatory guides listing NRC-approved ASME Code cases. The Director of NRR is hereby authorized to approve rulemakings that incorporate by reference editions and addenda of the ASME BPV and OM Codes and rulemakings that incorporate by reference NRC regulatory guides listing NRC-approved ASME Code cases.

This delegation of authority only applies to recurring 10 CFR 50.55a rulemakings pertaining to the Section III and Section XI of the ASME BPV Code, the OM Code, and the related regulatory guides (i.e., the applicability will not extend to 10 CFR 50.55a(h), in which the NRC incorporates by reference Institute of Electrical and Electronics Engineers (IEEE) Std. 603, "IEEE Standard Criteria for Safety Systems for Nuclear Power Generating Stations," pertaining to protection and safety systems). It applies only to those rulemakings that are routine in nature and represent the updating of basic codes and standards previously approved by the Commission for incorporation by reference. In exercising this rulemaking authority, the Director of NRR shall seek the concurrences of all applicable NRC offices. In accordance with current rulemaking procedures, the proposed and final rulemaking packages must contain an authority citation; a notice informing the Commission that the proposed or final rule has been signed and will be forwarded to the Office of the Federal Register after a specified number of days, unless otherwise directed by the Commission; and an EDO Daily Note and Weekly Highlight. Any disagreement causing an applicable NRC office to withhold its concurrence shall be referred to the EDO for resolution.

Only the Director or Acting Director of NRR may approve these rulemakings and the authority to do so may not be further redelegated.

This delegation of authority shall be reflected in the next scheduled update of Management Directive 6.3, "The Rulemaking Process".

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