

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1124 and 1135

[Docket No. AO-368-A30, AO-380-A18; DA-01-08]

Milk in the Pacific Northwest and Western Marketing Areas; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: The Agricultural Marketing Service is correcting the proposed rule that appeared in the *Federal Register* of March 4, 2002, (67 FR 9622), which gave notice of a public hearing being held to consider proposals that would amend certain pooling and related provisions of the Pacific Northwest and Western Federal milk marketing orders. The document was published with an inadvertent error regarding the date of the public hearing. This docket corrects the error to show the public hearing will begin on April 16, 2002.

DATE: March 4, 2002.

FOR FURTHER INFORMATION CONTACT:

Gino Tosi, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2968, 1400 Independence Avenue, SW STOP 0231, Washington, DC 20250-0231, (202) 690-1366, e-mail address: gino.tosi@usda.gov.

SUPPLEMENTARY INFORMATION: In the proposed rule beginning on page 9622 of the *Federal Register* for Monday, March 4, 2002, the hearing date in the second column on page 9622 is corrected in both the **DATES** and **SUPPLEMENTARY INFORMATION** sections to read as follows:

DATES: The hearing will convene at 8:30 a.m. on Tuesday, April 16, 2002.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Hilton Hotel, Salt Lake City Airport, 5151 Wiley Post Way, Salt Lake City, UT 84116-2891, (801) 539-1515 (voice), (801) 539-1113 (fax), beginning at 8:30 a.m., on Tuesday, April 16, 2002, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Pacific Northwest and Western marketing areas.

Dated: March 14, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02-6657 Filed 3-15-02; 11:53 am]

BILLING CODE 3410-08-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150-AG86

Incorporation by Reference of ASME BPV and OM Code Cases

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to incorporate by reference certain American Society of Mechanical Engineers (ASME) Code Cases which the NRC has reviewed and found acceptable for use. These code cases provide alternatives to requirements in the ASME Boiler and Pressure Vessel Code (BPV Code) and the ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code) pertaining to inservice inspection and inservice testing, operation and maintenance, and design, construction and materials. This action would incorporate by reference the current versions of NRC-developed Regulatory Guides which address NRC review and approval of ASME-published code cases. In connection with this action, the NRC published a notice of the issuance and availability of the current versions of the three proposed regulatory guides addressing NRC approval of ASME BPV Code Cases and the OM Code Cases (66 FR 67335; December 28, 2001) for public comment. As a result of these related actions,

NRC-approved code cases would be accorded the same legal status as the corresponding requirements in the ASME BPV Code and OM Code which are already incorporated by reference in the NRC's regulations.

DATES: Submit comments by June 3, 2002. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only of comments received on or before this date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. ATTN: Rulemakings and Adjudications Staff.

Comments may be hand delivered to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Copies of the public comments received on this proposed rule will be available for public inspection or copying in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, Room O-1 F21.

Public comments may be provided via the NRC's interactive rulemaking website at <http://ruleform.llnl.gov>. Through use of this site, the public may upload comments as files (in any format), provided that the web browser used supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher at (301) 415-5905, e-mail cag@nrc.gov.

The NRC maintains an Agencywide Documents Access Management System (ADAMS) which provides text and image files of NRC's public documents. Publicly available documents pertaining to this rulemaking may be accessed through the NRC's Public Electronic Reading Room (PERR) on the Internet at <http://www.nrc.gov/reading-rm/adams.html>. If ADAMS access is not available or difficulty is encountered in its use, contact the NRC PDR Reference staff at 1-800-397-4209, (301) 415-4737, or through the PDR's e-mail address at pdr@nrc.gov. Further information about obtaining documents relevant to this rulemaking, including a list of ADAMS accession numbers, can be found in the "Availability of Documents" Section below, under the **SUPPLEMENTARY INFORMATION** heading.

FOR FURTHER INFORMATION CONTACT: Harry S. Tovmassian, Office of Nuclear

Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-3092, e-mail hst@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

New editions of the ASME BPV and OM Codes are issued every three years and addenda to the editions are issued annually. It has been the Commission's policy to update 10 CFR 50.55a to incorporate the ASME Code editions and addenda by reference. Section 50.55a was last amended on September 22, 1999 (64 FR 51370), to incorporate by reference the 1995 edition of these codes, up to and including the 1996 addenda. The ASME also publishes code cases for Section III and Section XI quarterly, and code cases for the OM Code yearly. Code cases are generally alternatives to the requirements of the ASME BPV Code and the OM Code. It has been the NRC staff's practice to review these code cases and find them either acceptable, conditionally acceptable, or unacceptable for use by NRC licensees. These code cases are then listed in periodically revised regulatory guides (RGs), together with information on their acceptability. Footnote 6 to 10 CFR 50.55a refers to the RGs listing code cases determined by the staff to be "suitable for use." The publication dates and version numbers of the RGs are not specified in Footnote 6. In the past, these RGs have not been approved by the Director of the Office of the Federal Register (OFR) for incorporation by reference in the Code of Federal Regulations.

Discussion

The NRC has identified a concern with the practice of generally referencing the RGs addressing ASME Code Cases in Footnote 6 to 10 CFR 50.55a. The notice and comment provisions of the Administrative Procedure Act (APA) (5 U.S.C. 551, *et seq.*), as amended, arguably are not satisfied by this practice. To address this matter, the NRC is proposing that the use of ASME Code Cases be approved through a rulemaking incorporating the applicable RGs by reference into Title 10 of the Code of Federal Regulations.

Over the past several years, NRC licensees have expressed concern that the NRC process for reviewing and approving code cases is protracted and, therefore, they have borne the additional burden of submitting relief requests to use code cases not yet approved. To improve the efficiency of the process for endorsement of ASME Code Cases, the NRC plans to proceed

as follows for future updates. First, the NRC will review code cases and revise the RGs periodically to indicate code cases approved for use by NRC licensees. This is simply a continuation of past practice. The NRC will issue the draft RGs for comment prior to issuance of the final RGs. At approximately the time each set of final guides are issued, the NRC intends to also issue the next set of proposed guides so that the time lapse between code case publication and NRC incorporation by reference may be diminished. Second, the NRC will conduct rulemakings to incorporate the revised RGs by reference into 10 CFR 50.55a. The NRC will complete each rulemaking within a short time of the issuance of the applicable final RGs. Where these rulemakings do not involve significant questions of policy, they will be authorized in accordance with the rulemaking authority delegated to the NRC's Executive Director for Operations under NRC Management Directives 6.3 and 9.17. To expedite the issuance of subsequent rules, the NRC will conduct such rulemakings without preparing a rulemaking plan. The need to conduct these rulemakings will be determined strictly by the schedule for revision of the associated RGs. These actions should expedite the NRC process for reviewing and approving ASME Code Cases.

Paragraph-By-Paragraph Discussion

The proposed rule would add a new paragraph (i) to 10 CFR 50.55a that identifies the RGs (including their revision numbers) to be incorporated by reference into Title 10 of the Code of Federal Regulations. In addition, the text of the existing Footnote 6 to § 50.55a would be deleted and references to Footnote 6 in 10 CFR 50.55a would be revised to state that optional ASME Code Cases are incorporated by reference in paragraph (i). In the proposed rule, the NRC has added the new language governing incorporation by reference of ASME Code Cases to paragraph (i) of § 50.55a. However, the NRC is considering two alternatives for placement of this language: (1) Placing the relevant code case language of approval into paragraph (b) of Section 50.55a; and (2) redesignating paragraph (h), which currently sets forth the endorsement of the IEEE Std. 603-1991 and IEEE Std. 279, as paragraph (i), and placing the code case language of approval in paragraph (h). The NRC requests public comment on these alternatives.

1. Current references to Footnote 6 in §§ 50.55a(c)(3), (d)(2), and (e)(2) would be removed and text would be added indicating that the optional ASME Code

Cases referred to are those listed in the RGs that are incorporated by reference in § 50.55a(i).

2. The current references to Footnote 6 contained in §§ 50.55a(f)(2), (f)(3)(iii)(A), (f)(3)(iv)(A), (g)(2), (g)(3)(i), and (g)(3)(ii) would be removed and text would be added indicating that the optional ASME Code Cases referred to are those listed in the RGs that are incorporated by reference in § 50.55a(i). Note that these requirements do not specify that optional ASME Code Cases may be applied; this language would be added.

3. Paragraph (i) would be added to § 50.55(a). This paragraph would contain the language of incorporation by reference and identify each RG by title and revision number and would contain implementation requirements for each RG incorporated by reference.

Footnote 6 to 10 CFR 50.55a states that ASME Code Cases suitable for use are listed in RGs 1.84, 1.85, and 1.147. Footnote 6 also states that the use of other code cases may be authorized by the Director of the Office of Nuclear Reactor Regulation upon request pursuant to § 50.55a(a)(3). The new paragraph (i) would specify the applicable RGs for incorporation by reference. Further, the NRC regulations in § 50.55a(a)(3) allow requests for the use of alternatives (including code cases not listed in the RGs). Therefore, providing this information in Footnote 6 will no longer be necessary. In particular, paragraph (i) would incorporate by reference proposed revisions to RGs 1.84 and 1.147 as well as a new proposed RG entitled "Operation and Maintenance Code Case Acceptability—ASME OM Code," temporarily designated DG-(1089). These RGs list code cases applicable to Section III of the ASME BPV Code, Section XI of the ASME BPV Code, and the ASME OM Code, respectively, that have been accepted unconditionally, or with conditions and limitations specified by the NRC, as alternatives to specific code provisions.

Paragraph (i) would also require that licensees initially applying a code case which is listed in one of the RGs as acceptable use the most recent published version of the code case. If a licensee is applying a particular version of an approved code case, and a later version is incorporated into the applicable RG as acceptable, the licensee may continue to apply the earlier version of the code case unless the RG specifies a limitation or condition on its application or, for Section XI and OM Code Cases, until the next 120-month inservice inspection or test interval, as applicable.

Paragraph (i) would also note that the NRC will revise the RGs to delete code cases annulled by ASME. A licensee implementing a code case that is subsequently annulled may continue to apply that code case until the licensee updates its Section III code of record or until the beginning of its next inservice inspection or test interval, as applicable, unless the regulations specifically prohibit application of the code case. Licensees may request approval to apply annulled code cases through the provisions of 10 CFR 50.55a(3).

4. Footnote 6 would be removed from 10 CFR 50.55a and the footnote number would be reserved.

Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following:

Public Document Room (PDR)

The NRC Public Document Room is located at 11555 Rockville Pike, Rockville, Maryland.

Rulemaking Website (Web)

The NRC's interactive rulemaking Website is located at <http://ruleforum.llnl.gov>. These documents may be viewed and downloaded electronically via this Website.

The NRC's Public Electronic Reading Room (PERR)

The NRC's public electronic reading room is located at www.nrc.gov/reading-rm/adams.html.

The NRC Staff Contact (NRC Staff)

Single copies of the **Federal Register** Notice, the Draft Regulatory Analysis, the Draft Environmental Assessment, and the proposed Regulatory Guides may be obtained from Harry S. Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Alternatively, you may contact Mr. Tovmassian at (301) 415-3092, or via e-mail at: hst@nrc.gov.

Document	PDR	Web	PERR	NRC staff
Draft Environmental Assessment	x	x	ML020160281	x
Draft Regulatory Analysis	x	x	ML020160302	x
Public Comments Received	x	.....	.....	x
Draft Regulatory Guide DG-1089—ASME OM Code Case Acceptability	x	.....	ML013120051	x
Draft Regulatory Guide DG-1090—ASME BPV, Section III Code Case Acceptability.	x	.....	ML013120011	x
Draft Regulatory Guide DG-1091—ASME BPV, Section XI, Division 1 Code Case Acceptability.	x	.....	ML013120019	x

Plain Language

The Presidential memorandum dated June 1, 1998, entitled "Plain Language in Government Writing," directed that the Government's documents be written in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). In complying with this directive, editorial changes have been made in these proposed revisions to improve the organization and readability of the existing language of the paragraphs being revised. These types of changes are not discussed further in this document. The NRC requests comments on the proposed rule, specifically with respect to the clarity of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption above.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113, requires agencies to use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. The NRC is proposing to amend its regulations to incorporate by reference three RGs that list ASME BPV and OM Code Cases which have been approved unconditionally, approved with conditions, or annulled. The ASME Code is a national consensus

standard developed by participants with broad and varied interests, in which all interested parties (including the NRC and utilities) participate.

In a Staff Requirements Memorandum dated September 10, 1999, the Commission directed the NRC staff to identify all portions of an adopted voluntary consensus standard which are not adopted by the staff and to provide a justification for not adopting such portions. The NRC staff periodically revises the RGs in which the acceptability of the ASME-approved code cases is addressed. In doing so, it provides a justification for conditionally approving or disapproving certain ASME Code Cases and offers the public an opportunity to comment on its findings. Thus, the Commission's September 10, 1999, direction has been satisfied in the staff's treatment of these voluntary consensus standards.

In accordance with the National Technology Transfer and Advancement Act of 1995 and Office of Management and Budget (OMB) Circular A-119, the NRC is requesting public comment regarding whether other national or international consensus standards could be endorsed as alternatives to the ASME BPV Code Cases and the ASME OM Code Cases.

Finding of No Significant Environmental Impact: Availability

The Commission has determined, in accordance with the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement is not required. This proposed rule would amend NRC's regulations to incorporate by reference three RGs that list ASME Code Cases approved by the NRC and the conditions, if any, on such approvals. Some ASME Code Cases endorsed in these RGs are interpretive of the requirements in the applicable sections of the ASME BPV Code or OM Code that are incorporated by reference in § 50.55a(b) or explain methods of compliance with the code requirements. Other code cases provide alternatives to specific ASME Code requirements. These alternatives may involve the use of advanced technology or procedures, or use new information not available when the code editions or addenda were approved. Thus, the use of code cases as alternatives to ASME Code requirements can enhance safety or reduce the probability of radiation exposure to the public. Although some code cases represent a relaxation of code

requirements, the NRC does not believe that the proposed rulemaking would increase the probability or consequences of accidents; affect the types of effluents that might be released off-site; increase occupational exposure; or increase public radiation exposure. Therefore, the NRC does not expect significant radiological impacts associated with the proposed action.

The determination of the environmental assessment associated with this proposed rule is that there would be no significant off-site impact to the public from this action. However, the public should note that the NRC is committed to complying with Executive Order (EO) 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," dated February 11, 1994, in all its actions. The NRC has determined that there are no disproportionately high adverse impacts on minority and low-income populations. In the letter and spirit of EO 12898, the NRC is requesting public comment on any environmental justice considerations or questions related to the proposed rule. The NRC defines "environmental justice" as "the fair treatment and meaningful involvement of all people, regardless of race, ethnicity, culture, income, or educational level with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." Comments on any aspect of the environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** caption above. Copies of the environmental assessment may be obtained via the Internet or from the NRC's Public Document Room as described under the **ADDRESSES** caption above. The NRC has sent a copy of this proposed rule, including copies of the aforementioned environmental assessment, to the State Liaison Officers and requested their comments.

Paperwork Reduction Act Statement

This proposed rule decreases the burden on licensees for recordkeeping and reporting requirements related to examinations, tests, and repair and replacement activities during refueling outages. The annual public burden reduction for this information collection is estimated to average 136 hours for each of an estimated 69 requests. Because the burden reduction for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150-0011.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The ASME Code Cases contained in the draft RGs provide voluntary alternatives to the provisions in the ASME BPV Code and OM Code for construction, inservice inspection, and inservice testing of specific structures, systems, and components used in nuclear power plants. Implementation of these code cases is not required. NRC-approved ASME Code Cases all represent some form of burden reduction or additional operational flexibility to NRC licensees which would be difficult for the NRC to provide independent of the ASME Code publication process without a considerable additional resource commitment. The NRC has prepared a draft regulatory analysis addressing the qualitative benefits of the alternatives considered in this rulemaking and compared the cost implications associated with each. The regulatory analysis is available for inspection in the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, Room O-1 F21. Single copies of the analysis may be obtained from Harry S. Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, telephone (301) 415-3092 or by e-mail at *hst@nrc.gov*.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule would affect only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

Backfit Analysis

The provisions of this proposed rule would permit licensees to voluntarily make use of NRC-approved ASME Code Cases in lieu of the requirements in the ASME BPV Code and OM Code incorporated by reference in the NRC's regulations. Licensees are at liberty to continue to comply with these codes if they wish. These proposed amendments

do not involve any provision that would constitute a backfit as defined in 10 CFR Chapter 50.109(a)(1). Thus, the NRC has determined that the Backfit Rule does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102-486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Sections 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a, and Appendix Q also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80, 50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 66 Stat. 955 (42 U.S.C. 2237).

2. Section 50.55a is amended by—

(a) Revising paragraphs (c)(3), (d)(2), (e)(2), (f)(2), (f)(3)(iii)(A), (f)(3)(iv)(A), (g)(2), (g)(3)(i) and (g)(3)(ii);

(b) Adding paragraph (i); and

(c) Removing the text of Footnote 6 and reserving the footnote number.

§ 50.55a Codes and standards.

* * * * *

(c) * * *

(3) The Code Edition, Addenda, and optional ASME Code Cases to be applied to components of the reactor coolant pressure boundary must be determined by the provisions of paragraph NCA-1140, Subsection NCA of Section III of the ASME Boiler and Pressure Vessel Code, but—

(i) The edition and addenda applied to a component must be those which are incorporated by reference in paragraph (b)(1) of this section;

(ii) The ASME Code provisions applied to the pressure vessel may be dated no earlier than the Summer 1972 Addenda of the 1971 Edition;

(iii) The ASME Code provisions applied to piping, pumps, and valves may be dated no earlier than the Winter 1972 Addenda of the 1971 Edition; and

(iv) The optional code cases applied to a component must be those listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section.

* * * * *

(d) * * *

(2) The Code Edition, Addenda, and optional ASME Code Cases to be applied to the systems and components identified in paragraph (d)(1) of this section must be determined by the rules of paragraph NCA-1140, Subsection NCA of Section III of the ASME Boiler and Pressure Vessel Code, but—

(i) The edition and addenda must be those which are incorporated by reference in paragraph (b)(1) of this section;

(ii) The ASME Code provisions applied to the systems and components may be dated no earlier than the 1980 Edition; and

(iii) The optional code cases must be those listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section.

(e) * * *

(2) The Code Edition, Addenda, and optional ASME Code Cases to be applied to the systems and components identified in paragraph (e)(1) of this section must be determined by the rules of paragraph NCA-1140, subsection NCA of Section III of the ASME Boiler and Pressure Vessel Code, but—

(i) The edition and addenda must be those which are incorporated by reference in paragraph (b)(1) of this section;

(ii) The ASME Code provisions applied to the systems and components may be dated no earlier than the 1980 Edition; and

(iii) The optional code cases must be those listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section.

(f) * * *

(2) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after January 1, 1971, but before July 1, 1974, pumps and valves which are classified as ASME Code Class 1 and Class 2 must be designed and be provided with access to enable the performance of inservice tests for operational readiness set forth in editions of Section XI of the ASME Boiler and Pressure Vessel Code and Addenda incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section) in effect 6 months prior to the date of issuance of the construction permit. The pumps and valves may meet the inservice test requirements set forth in subsequent editions of this code and addenda which are incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases incorporated by reference in paragraph (i) of this section), subject to the applicable limitations and modifications listed therein.

(3) * * *

(iii) * * *

(A) Pumps and valves, in facilities whose construction permit was issued before November 22, 1999, which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice testing of the pumps and valves for assessing operational readiness set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases that are listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section) applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

* * * * *

(iv) * * *

(A) Pumps and valves, in facilities whose construction permit was issued before November 22, 1999, which are classified as ASME Code Class 2 and Class 3 must be designed and be provided with access to enable the

performance of inservice testing of the pumps and valves for assessing operational readiness set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section) applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

* * * * *

(g) * * *

(2) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued on or after January 1, 1971, but before July 1, 1974, components (including supports) which are classified as ASME Code Class 1 and Class 2 must be designed and be provided with access to enable the performance of inservice examination of such components (including supports) and must meet the preservice examination requirements set forth in editions of Section XI of the ASME Boiler and Pressure Vessel Code and Addenda incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section) in effect six months prior to the date of issuance of the construction permit. The components (including supports) may meet the requirements set forth in subsequent editions of this code and addenda which are incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section), subject to the applicable limitations and modifications.

(3) * * *

(i) Components (including supports) which are classified as ASME Code Class 1 must be designed and be provided with access to enable the performance of inservice examination of such components and must meet the preservice examination requirements set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section) applied to the construction of the particular component.

(ii) Components which are classified as ASME Code Class 2 and Class 3 and supports for components which are

classified as ASME Code Class 1, Class 2, and Class 3 must be designed and be provided with access to enable the performance of inservice examination of such components and must meet the preservice examination requirements set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in the Regulatory Guides that are incorporated by reference in paragraph (i) of this section) applied to the construction of the particular component.

* * * * *

(i) Approved ASME Code Cases.

(1) NRC Regulatory Guide 1.84, Revision 32, "Design, Fabrication, and Materials Code Case Acceptability, ASME Section III;" NRC Regulatory Guide 1.147, Revision 13, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1;" and Regulatory Guide [temporarily designated DG-1089], "Operation and Maintenance Code Case Acceptability, ASME OM Code," have been approved for incorporation by reference by the Director of the Office of the Federal Register. These Regulatory Guides list ASME Code Cases which the NRC has approved for use. A notice of any changes made to the material incorporated by reference will be published in the **Federal Register**.

(i) The use of other code cases may be authorized by the Director of the Office of Nuclear Reactor Regulation upon request pursuant to § 50.55a(a)(3).

(ii) Copies of the incorporated material are available for inspection at the NRC Library, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852-2738. Copies are also available at the Office of the Federal Register, 800 N. Capitol Street, Suite 700, Washington, DC.

(iii) Requests for single copies of regulatory guides should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section, OCIO; or by e-mail to DISTRIBUTION@NRC.GOV; or by fax to (301) 415-2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(2) Design, Fabrication, and Materials Code Cases. Licensees may implement the ASME Boiler and Pressure Vessel Code Cases listed in NRC Regulatory Guide 1.84, Revision 32, without prior NRC approval subject to the following:

(i) When a licensee initially applies a listed code case, the licensee shall

implement the most recent version of that code case incorporated by reference in this paragraph.

(ii) If a licensee has previously implemented a code case and a later version of the code case is incorporated by reference in this section, the licensee may apply either the previous or later version of the code case, unless a specific limitation or condition is placed on the application of that code case, in which case the modification or limitation applies.

(iii) If a code case is incorporated by reference into § 50.55a and later is annulled by the ASME, the NRC will amend 10 CFR 50.55a and Regulatory Guide 1.84 to remove the annulled code case.

(iv) A licensee that has initiated implementation of a code case that is subsequently annulled by the ASME may continue to apply that code case until the licensee updates its Section III Code of record unless § 50.55a or Regulatory Guide 1.84 specifically prohibits continued application of the annulled code case.

(3) Inservice Inspection Code Cases. Licensees may implement the ASME Boiler and Pressure Vessel Code Cases listed in Regulatory Guide 1.147, Revision 13, without prior NRC approval subject to the following:

(i) When a licensee initially applies a listed code case, the licensee shall implement the most recent version of that code case incorporated by reference in this paragraph.

(ii) If a licensee has previously implemented a code case and a later version of the code case is incorporated by reference in this section during the licensee's present inservice inspection interval, the licensee may apply either the previous or later version of the code case, unless a specific limitation or condition is placed on the application of that code case, in which case the modification or limitation applies. A licensee choosing to continue to apply the code case during the subsequent 120-month inservice inspection interval shall implement the latest version of the code case incorporated by reference in this section.

(iii) If a code case is incorporated by reference into § 50.55a and is later annulled by the ASME, the NRC will amend 10 CFR 50.55a and Regulatory Guide 1.147 to remove the annulled code case.

(iv) A licensee that has initiated implementation of a code case that is subsequently annulled by the ASME may continue to apply that code case through the end of the present inservice inspection interval unless 10 CFR 50.55a or Regulatory Guide 1.147

specifically prohibits continued use of the annulled code case. An annulled code case may not be applied in a subsequent inservice inspection interval unless implemented as an approved alternative under 10 CFR 50.55a(a)(3).

(4) Operation and Maintenance Code Cases. Licensees may implement the ASME Operation and Maintenance Code Cases listed in Regulatory Guide [temporarily designated DG-1089] without prior NRC approval subject to the following:

(i) When a licensee initially applies a listed code case, the licensee shall implement the most recent version of that code case incorporated by reference in this paragraph.

(ii) If a licensee has previously implemented a code case and a later version of the code case is incorporated by reference in this section during the licensee's present inservice testing interval, the licensee may apply either the previous or later version of the code case, unless a specific limitation or condition is placed on the application of that code case, in which case the modification or limitation applies. A licensee choosing to continue to apply the code case during the subsequent 120-month inservice testing interval shall implement the latest version of the code case incorporated by reference in this section.

(iii) If a code case is incorporated by reference into § 50.55a and later is annulled by the ASME, the NRC will amend 10 CFR 50.55a and Regulatory Guide [temporarily designated DG-1089] to remove the annulled code case.

(iv) A licensee that has initiated implementation of a code case that is subsequently annulled by the ASME may continue to apply that code case through the end of the present inservice testing interval unless 10 CFR 50.55a or Regulatory Guide [temporarily designated DG-1089] specifically prohibits continued use of the annulled code case. An annulled code case may not be applied in a subsequent inservice testing interval unless implemented as an approved alternative under 10 CFR 50.55a(a)(3).

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Dated at Rockville, Maryland, this 1st day of March, 2002.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

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