

recordkeeping requirements, Retirement.

**John Berry,**

*Director, U.S. Office of Personnel Management.*

Accordingly, OPM is amending 5 CFR part 894 as follows:

**PART 894—FEDERAL EMPLOYEES DENTAL AND VISION PROGRAM**

1. The authority citation for part 894 is revised to read as follows:

**Authority:** 5 U.S.C. 8962; 5 U.S.C. 8992; subpart C also issued under sec. 1 of Public Law 110–279, 122 Stat. 2604.

**Subpart C—Eligibility**

2. Revise § 894.301 to read as follows

**§ 894.301 Am I eligible to enroll in the FEDVIP?**

You are eligible if—

(a) You meet the definition of *employee* in 5 U.S.C. 8901(1), unless you are in an excluded position;

(b) You are an employee of the United States Postal Service or the District of Columbia courts;

(c)(1) You were employed by the Architect of the Capitol as a Senate Restaurants employee the day before the food services operations of the Senate Restaurants were transferred to a private business concern; and

(2) You accepted employment by the business concern and elected to continue your Federal retirement benefits and your FEDVIP coverage. You continue to be eligible for FEDVIP coverage as long as you remain employed by the business concern or its successor.

3. Revise § 894.302 introductory text to read as follows:

**§ 894.302 What is an excluded position?**

Excluded positions are described in 5 U.S.C. 8901(1)(i), (ii), (iii), and (iv) and 5 CFR 890.102(c), except that employees of the United States Postal Service and District of Columbia courts are not excluded positions.

\* \* \* \* \*

**Subpart E—Enrollment and Changing Enrollment**

4. Revise § 894.501(d) to read as follows:

**§ 894.501 When may I enroll?**

\* \* \* \* \*

(d) From 31 days before you or an eligible family member loses other dental/vision coverage to 60 days after a QLE that allows you to enroll.

5. Revise § 894.510(c) and (d) to read as follows:

**§ 894.510 When may I decrease my type of enrollment?**

\* \* \* \* \*

(c)(1) Except as provided in paragraph (c)(2) of this section, you may decrease your type of enrollment only during the period beginning 31 days before your QLE and ending 60 days after your QLE.

(2) You may make any of the following enrollment changes at any time beginning 31 days before a QLE listed in § 894.511(a):

(i) A decrease in your self plus one enrollment;

(ii) A decrease in your self and family enrollment to a self plus one enrollment, when you have only one remaining eligible family member; or

(iii) A decrease in your self and family enrollment to a self only enrollment, when you have no remaining eligible family members.

(d)(1) Except as provided in paragraph (d)(2) of this section, your change in enrollment is effective the first day of the first pay period following the one in which you make the change.

(2) If you are making an enrollment change described in paragraph (c)(2) of this section, your change in enrollment is effective on the first day of the first pay period following the QLE on which the enrollment change is based.

\* \* \* \* \*

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**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 50**

**RIN 3150–AI37**

**[NRC 2009–0014]**

**Incorporation by Reference of Regulatory Guide 1.84, Revision 35, and Regulatory Guide 1.147, Revision 16, Into 10 CFR 50.55a**

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Proposed rule.

**SUMMARY:** The NRC is proposing to amend its regulations to incorporate by reference the latest revisions of two regulatory guides (RG) that would approve new and revised code cases published by the American Society of Mechanical Engineers (ASME). These are RG 1.84, “Design, Fabrication, and Materials Code Case Acceptability, ASME Section III,” Revision 35, and RG 1.147, “Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,” Revision 16. This action

would allow the use of the code cases listed in these RGs as alternatives to requirements in the ASME Boiler and Pressure Vessel (BPV) Code regarding the construction and inservice inspection (ISI) of nuclear power plant components. Concurrent with this action, the NRC is publishing a notice of the issuance and availability of the RGs in the **Federal Register**.

**DATES:** Submit comments by August 17, 2009. 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:** You may submit comments by any one of the following methods. Please include the number RN 3150–AI37 in the subject line of your comments. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

*Federal e Rulemaking Portal:* Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC–2009–0014. Address questions about NRC dockets to Carol Gallagher at 301–492–3668, e-mail [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

*Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attn:* Rulemakings and Adjudications Staff.

*E-mail comments to:* *Rulemaking.Comments@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.

*Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

Publicly available documents related to this rulemaking, including comments, may be viewed electronically on the public computers located at the NRC’s Public Document Room (PDR), O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The PDR reproduction contractor will copy documents for a fee.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC’s Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into ADAMS, which provides text and image files of NRC’s public documents. If you do not have access to ADAMS or if there are problems in accessing the documents

located in ADAMS, contact the PDR Reference staff at 800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:**  
Manash K. Bagchi or L. M. Padovan, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-415-2905, e-mail [Manash.Bagchi@nrc.gov](mailto:Manash.Bagchi@nrc.gov), or 301-415-1423, e-mail [Mark.Padovan@nrc.gov](mailto:Mark.Padovan@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The ASME develops and publishes the ASME BPV Code, which contains requirements for the design, construction, and ISI of nuclear power plant components, and the *Code for Operation and Maintenance of Nuclear Power Plants* (OM Code), which contains requirements for inservice testing (IST) of nuclear power plant components. In response to BPV and OM Code user requests, the ASME develops ASME Code Cases which provide alternatives to BPV and OM Code requirements under special circumstances.

The NRC approves and/or mandates the use of the ASME BPV and OM Code in 10 CFR 50.55a through the process of incorporation by reference. As such, each provision of the ASME Codes incorporated by reference into, and mandated by, § 50.55a constitutes a legally-binding NRC requirement imposed by rule. As noted above, ASME Code Cases, for the most part, represent alternative approaches for complying with provisions of the ASME BPV and OM Codes. Accordingly, the NRC periodically amends § 50.55 to incorporate by reference NRC RGs listing approved ASME Code Cases which may be used as alternatives to the BPV Code and the OM Code. See 68 FR 40469 (July 8, 2003).

This rulemaking is the latest in a series of rulemakings which incorporate

by reference new versions of several RGs identifying new and revised<sup>1</sup> ASME Code Cases which are approved for use, either unconditionally or with conditions. In developing these RGs, the NRC staff reviews ASME BPV and OM Code Cases, determines the acceptability of each Code Case, and publishes its findings in RGs. The RGs are revised periodically as new code cases are published by the ASME. The NRC incorporates by reference the RGs listing acceptable and conditionally acceptable ASME Code Cases into 10 CFR 50.55a. Currently, NRC RG 1.84, Revision 34, "Design, Fabrication, and Materials Code Case Acceptability, ASME Section III;" RG 1.147, Revision 15, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1;" and RG 1.192, "Operation and Maintenance Code Case Acceptability, ASME OM Code," are incorporated into the NRC's regulations at 10 CFR 50.55a, Codes and standards.

**Description of NRC Approval of New and Amended ASME Code Cases**

This proposed rule would incorporate by reference the latest revisions of the NRC RGs that list acceptable and conditionally acceptable ASME BPV Code Cases. RG 1.84, Revision 35, Draft Regulatory Guide (DG) 1191, would supersede the incorporation by reference of Revision 34; and RG 1.147, Revision 16, DG 1192, would supersede the incorporation by reference of Revision 15. RG 1192 dated June 2003 would not be revised because there have been no new OM Code Cases published by the ASME since the last NRC staff review.

The ASME Code Cases which are the subject of this rulemaking are the new revised Section III and Section XI Code Cases listed in Supplements 2 through 11 to the 2004 BPV Code, and Supplement 0 published with the 2007 Edition of the BPV Code (Supplement 0 also serves as Supplement 12 to the

2004 Edition) of the code. The NRC follows a three step process to determine acceptability of new and revised ASME Code Cases and the need for conditions on the uses of these Code Cases. This process was employed in the review of the ASME Code Cases which are the subject of this proposed rule. First, NRC staff actively participates with other ASME committee members with full involvement in discussions and technical debates in the development of new and revised code cases. This includes a technical justification in support of each new or revised code case. Second, the NRC committee representatives distribute the code case and technical justification to other cognizant NRC staff to ensure an adequate technical review. Finally, the proposed NRC position on each code case is reviewed and approved by NRC management as part of the rulemaking amending 10 CFR 50.55a to incorporate by reference new revisions of the RGs listing the relevant ASME Code Cases and conditions on their use. This regulatory process, when considered together with the ASME's own process for development and approval of ASME Code Cases, provides reasonable assurances that the NRC approves for use only those new and revised ASME Code Cases (with conditions as necessary) which provide reasonable assurance of adequate protection to public health and safety and which do not have significant adverse impacts on the environment.

*Code Cases Approved Unconditionally for Use*

The NRC concluded, in accordance with the process for review of ASME Code Cases, that each of the ASME Code Cases listed in Table 1 is technically adequate and consistent with current NRC regulations.

TABLE 1

Code case No.	Supplement	Title
<b>Section III</b>		
N-4-12 .....	4	Special Type 403 Modified Forgings or Bars, Class and CS, Section III, Division 1.
N-284-2 .....	12	Metal Containment Shell Buckling Design Methods, Class MC, Section III, Division 1.
N-373-3 .....	3	Alternative postweld heat treatment (PWHT) Time at Temperature for P-No. 5A or P-No. 5B Group 1 Material, Classes 1, 2, and 3 Section III, Division 1.
N-621-1 .....	3	Ni-Cr-Mo Alloy Unified Numbering System (UNS) N06022) Weld Construction to 800 °F, Section III, Division 1.

<sup>1</sup> ASME Code Cases can be categorized as one of two types: new and revised. A new Code Case provides for the first time an alternative to specific ASME Code provisions or addresses a new

need. A revised Code Case is a revision (modification) to an existing Code Case to address, for example, technological advancements in examination techniques or to address NRC

conditions imposed in one of the regulatory guides which have been incorporated by reference into 10 CFR 50.55a.

TABLE 1—Continued

Code case No.	Supplement	Title
N-699 .....	8	Use of Titanium Grade 2 (UNS R50400) Tube and Bar, and Grade 1 (UNS R50250) Plate and Sheet for Class 1 Construction, Section III, Division 1.
N-725 .....	4	Design Stress Values for UNS N06690 With Minimum Specified Yield Strength of 35 Ksi (240 Mpa), Classes 2 and 3 Components, Section III, Division 1.
N-727 .....	9	Dissimilar Welding Using Continuous Drive Friction Welding for Reactor Vessel Control Rod Drive Mechanism (CRDM)/Control Element Drive Mechanism (CEDM) Nozzle to Flange/Adapter Welds, Class 1, Section III, Division 1.
N-732 .....	5	Magnetic Particle Examination of Forgings for Construction, Section III, Division 1.
N-736 .....	8	Use UNS S32050 Welded and Seamless Pipe and Tubing, Forgings, and Plates Conforming to SA-249/SA-249M, SA-479/SA-479M, and SA-240/SA-240M, and Grade CK35MN Castings Conforming to ASTM A 743-03 for Construction of Class 1, 2, and 3 Components, Section III, Division 1.
N-738 .....	6	NDE of Full Penetration Butt Welds in Class 2 Supports, Section III, Division 1.
N-741 .....	7	Use of 22Cr-5Ni-3Mo-N (Alloy UNS S32205 Austenitic/Ferritic Duplex Stainless Steel) Forgings, Plate, Welded and Seamless Pipe Tubing, and Fittings to SA-182, SA-240, SA-789, A 790-04a, SA-815, Classes 2 and 3, Section III, Division 1.
N-744 .....	11	Use of Metric Units Boiler and Pressure Vessel Code, Section III, Division 1.
N-746 .....	8	Use of 46Fe-24Ni-21Cr-6Mo-Cu-N (UNS N08367) Bolting Materials for Class 2 and 3 Components, Section III, Division 1.
N-756 .....	12	Alternative Rules for Acceptability for Class 1 Valves, nominal pipe size (NPS) diameter nominelle (DN 25) and Smaller with Non-Welded End Connections Other than Flanges, Section III, Division III
N-759 .....	11	Alternative Rules for Determining Allowable External Pressure and Compressive Stresses for Cylinders, Cones, Spheres, and Formed Heads, Section III, Division 1.
<b>Section XI</b>		
N-494-4 .....	7	Pipe Specific Evaluation Procedures and Acceptance Criteria for Flaws in Piping that Exceed the Acceptance Standards, Section XI, Division 1.
N-496-2 .....	2	Reaffirmed Helical-Coil Threaded Inserts, Section XI, Division 1.
N-666 .....	9	Weld Overlay of Class 1, 2, and 3 Socket Welded Connections, Section XI, Division 1.
N-686-1 .....	12	Alternative Requirements for Visual Examinations VT-1, VT-2, and VT-3, Section XI, Division 1.
N-705 .....	11	Evaluation Criteria for Temporary Acceptance of Degradation in Moderate Energy Class 2 or 3 Vessels and Tanks, Section XI, Division 1.
N-706-1 .....	12	Alternative Examination Requirements of Table IWB-2500-1 and Table IWC-2500-1 for Pressurized Water Reactor (PWR) Stainless Steel Residual and Regenerative Heat Exchangers, Section XI, Division 1.
N-712 .....	2	Roll Expansion of Class 1 Control Rod Drive Bottom Head Penetrations in Boiling Water Reactors (BWR), Section XI, Division 1.
N-730 .....	11	Class 1 Socket Weld Examinations, Section XI, Division 1.
N-731 .....	5	Alternative Class 1 System Leakage Test Pressure Requirements, Section XI, Division 1.
N-733 .....	6	Mitigation of Flaws in NPS 2 (DN 50) and Smaller Nozzles and Nozzle Partial Penetration Welds in Vessels and Piping by Use of a Mechanical Connection Modification, Section XI, Division 1.
N-735 .....	11	Successive Inspection of Class 1 and 2 Piping Welds, Section XI, Division 1.
N-739 .....	11	Alternative Qualification Requirements for Personnel Performing Class CC Concrete and Post-tensioning System Visual Examinations, Section XI, Division 1.
N-753 .....	10	Vision Tests, Section XI, Division 1.

#### Code Case Approved for Use With Conditions

As a result of the NRC staff's review, the NRC determined that certain code cases were technically inadequate or required supplemental guidance. Accordingly, the NRC proposes to impose conditions upon the use of these code cases. These ASME Code Cases are included in DG-1191 (RG 1.84, in Table 2, and in DG-1192 (RG-1.147) in Table 2. The NRC's evaluation of the code cases and the reasons for the NRC's proposed conditions are discussed in the following paragraphs. Notations have been made to indicate the conditions duplicated from previous versions of the regulatory guides.

The NRC requests public comment on these code cases as part of this rulemaking. It should also be noted that

the following paragraphs only address those code cases for which the NRC proposes to impose condition which are listed in the regulatory guides for the first time (e.g., Code Case N-532-4, which is listed in Supplement 9, has already been approved in Revision 15 to RG 1.147).

#### 4.5 Section III

Code Case N-570-1 [S8]

*Type:* Revised.

*Title:* *Alternative Rules for Linear Piping and Linear Standard Supports for Classes 1, 2, 3, and [Metal Cladding (MC)], Section III, Division 1.*

Code Case N-570-1 references American National Standards Institute (ANSI)/American Institute of Steel Construction (AISC) N690-1994 s1, "Supplement No. 1 to the Specification

for the Design, Fabrication, and Erection of Steel Safety-Related Structures for Nuclear Facilities." However, the AISC issued Supplement 2 on October 6, 2004. Supplement 2 supersedes Supplement 1.

The updated supplement (Supplement 2) is consistent with NRC positions and requirements for new reactor support design. Thus, the NRC is proposing to condition Code Case N-570-1 to require that ANSI/AISC N690-1994 s2, "Supplement No. 2 to the Specification for the Design, Fabrication, and Erection of Steel Safety-Related Structures for Nuclear Facilities," be used when this code case is implemented.

## 4.6 Section XI

Code Case N-416-4 [S1]

*Type:* Revised.

*Title: Alternative Pressure Test Requirement for Welded Repairs or Installation of Replacement Items by Welding, Class 1, 2, and 3, Section XI, Division 1.*

The NRC proposes to condition Code Case N-416-4 to require that nondestructive examination be performed for welded or brazed repairs and fabrication and installation joints in accordance with the methods and acceptance criteria of the applicable subsection of the 1992 Edition of Section III.

For certain welding repairs or replacements, the previous version of this code case (Code Case N-416-3) permitted a system leakage test to be performed in lieu of performing a hydrostatic pressure test provided that certain requirements are met. One of the requirements was that nondestructive examination (NDE) be performed on welded repairs, fabrication, and installation joints in accordance with the methods and acceptance criteria of the applicable subsection of the 1992 Edition of Section III.

This NDE requirement was removed when Code Case N-416-4 was issued. When Code Case N-416 was originally developed, the NRC agreed to the performance of system leakage testing in lieu of hydrostatic testing provided that NDE performed in conjunction with the repair met the requirements of the 1992 Edition of Section III. The reason for this stipulation is that some construction codes are less rigorous than others, depending on when the provisions were developed. The NRC believes that to justify the elimination of the NDE provision a hydrostatic pressure test would be required. It is the NRC's position that a system leakage pressure test does not provide an equivalent level of safety as a hydrostatic pressure test. The higher pressure of the hydrostatic pressure test would make any potential leakage more evident than if a system leakage test was performed, particularly in the case of smaller defects. In as much as the NRC believes that a hydrostatic pressure test would not be effective in this situation, the more rigorous NDE requirements of Section III must be performed (as is currently required by N-416-3).

As discussed above, the NDE provision is contained in Code Case N-416-3. Code Case N-416-3 was approved in Revision 14 of Regulatory Guide 1.147 (August 2005), which has already been implemented by licensees. Thus, requiring the performance of NDE

after these repairs and replacements is not a new position and is merely the continuation of current practice. It should be noted that the NDE requirement was also removed from paragraph IWA-4540(a) of the 2003 Addenda to Section XI. The NRC imposed a condition similar to the one discussed above for Code Case N-416-3 in 10 CFR 50.55a on the use of IWA-4540(a) in the 2003 Addendum to Section XI.

Code Case N-504-4 [S10]

*Type:* Revised.

*Title: Alternate Rules for Repair of Classes 1, 2, and 3 Austenitic Stainless Steel Piping, Section XI, Division 1.*

Revision 3 to this code case was conditionally approved in Revision 15 to RG 1.147 to require that Section XI, Nonmandatory Appendix Q, "Weld Overlay Repair of Class 1, 2, and 3 Austenitic Stainless Steel Piping Weldments," must also be met. The NRC has determined that N-504-4 is acceptable with the same condition. Accordingly, the regulatory position has not changed.

Code Case N-638-4 [S11]

*Type:* Revised.

*Title: Similar and Dissimilar Metal Welding Using Ambient Temperature Machine (GTAW) Temper Bead Technique, Section XI, Division 1.*

The same conditions applied to the previous version of the code case (N-638-1) which was approved in Revision 15 to RG 1.147 (Revisions 2 and 3 to the code case were published by the ASME between regulatory guide cycles). Accordingly, the NRC's position has not changed.

Code Case N-661-1 [S7]

*Type:* Revised.

*Title: Alternative Requirements for Wall Thickness Restoration of Class 2 and 3 Carbon Steel Piping for Raw Water Service, Section XI, Division 1.*

With regard to Code Case N-661-1, the NRC is proposing to retain conditions (a) and (c) of the following three conditions that were imposed on Code Case N-661 in RG 1.147, Revision 15:

(a) If the root cause of the degradation has not been determined, the repair is only acceptable for one cycle.

(b) Weld overlay repair of an area can only be performed once in the same location.

(c) When through-wall repairs are made by welding on surfaces that are wet or exposed to water, the weld overlay repair is only acceptable until the next refueling outage.

Code Case N-661-1 uses the term "one fuel cycle." It is unclear what one

fuel cycle actually infers if a repair is performed in mid-cycle. It may be interpreted that the repair is acceptable for the remainder of the current fuel cycle plus the subsequent fuel cycle. As can be seen from the conditions above, other terms such as "one cycle" have been used. To be unambiguous and ensure that a suitable re-inspection frequency has been established when the cause of the degradation is unknown or when the potential for hydrogen cracking exists due to the welding conditions, the term "next refueling outage" has been adopted in condition (a) rather than the term "one cycle." There is no change needed regarding condition (c).

With regard to condition (b) on Code Case N-661, ASME made technical changes to the code case to address the NRC's concerns. The NRC finds the changes acceptable and thus condition (b) has been deleted relative to the implementation of Code Case N-661-1.

Code Case N-751 [S11]

*Type:* New.

*Title: Pressure Testing of Containment Penetration Piping, Section XI, Division 1—When a 10 CFR [Part] 50, Appendix[-]J, Type[-]C, test is performed as an alternative to the requirements of IWA-4540 (IWA-4700 in the 1989 edition through the 1995 edition) during repair and replacement activities, nondestructive examination must be performed in accordance with IWA-4540(a)(2) of the 2002 Addenda of Section XI.*

The code case would allow an Appendix-J Type-C test to be performed as an alternative to the ASME Code requirement to pressure test piping that penetrates a containment vessel if the piping and isolation valves that are part of the containment system are Class 2 and the balance of the piping system is outside the scope of Section XI. However, in IWA-4540 of the 2003 addenda and later edition and addenda of the ASME Code, the NDE requirement associated with the system leakage test has been removed. For the plants that used the ASME B31.1 Code for construction, there was no requirement to volumetrically examine certain piping components during fabrication. Section XI requires NDE per the construction code as part of repair/replacement activities. Thus, if a B31.1 plant performs a repair to certain Class 2 or Class 3 piping, the construction code does not contain a provision for the NDE (as required by Section XI). Volumetric examination after repair or replacement is required to ensure high quality welds. A pressure test is only capable of determining the leak-

tightness of a weld at the time of the pressure test. Volumetric examination ensures high quality welds capable of performing their design function for the life of the component. Therefore, the NRC proposes a limitation on the use of Code Case N-751 so that when a 10 CFR Part 50, Appendix-J, Type-C test is performed as an alternative to the requirements of IWA-4540 (IWA-4700 in the 1989 edition through the 1995 edition) during repair and replacement activities, NDE must be performed in accordance with IWA-4540(a)(2) of the 2002 Addenda of Section XI.

#### *ASME Code Cases Not Approved for Use*

ASME Code Cases which are currently issued by the ASME but not approved for generic use by the NRC are listed in RG 1.193, "ASME Code Cases Not Approved for Use." The ASME Code Cases which are not approved for use include those code cases on high-temperature gas-cooled reactors; certain requirements in Section III, Division 2, that are not endorsed by the NRC; liquid metal; and submerged spent fuel waste casks. RG 1.193 complements RGs 1.84 and 1.147. It should be noted that RG 1.193 is not part of this rulemaking as the NRC is not proposing to adopt any of the code cases listed in this RG. Also, the NRC is not seeking public comment on whether the NRC should approve any of the ASME Code Cases in RG 1.193. The RG is merely discussed as a matter of completeness.

#### **Paragraph-by-Paragraph Discussion**

##### *Overall Considerations on the Use of ASME Code Cases*

This rulemaking would amend 10 CFR 50.55a to incorporate by reference RG 1.84, Revision 35, which would supersede Revision 34, and RG 1.147, Revision 16, which would supersede Revision 15. The following general guidance applies to the use of the ASME Code Cases approved in the latest versions of the regulatory guides which are incorporated by reference into 10 CFR 50.55a as part of this rulemaking.

The endorsement of a code case in NRC RGs constitutes acceptance of its technical position for applications which are not precluded by regulatory or other requirements or by the recommendations in these or other RGs. The applicant and licensee are responsible for ensuring that use of the code case does not conflict with regulatory requirements or licensee commitments. The code cases listed in the RGs are acceptable for use within the limits specified in the code case. If the RG states an NRC condition on the

use of a code case, then the NRC condition supplements and does not supersede any condition(s) specified in the code case, unless otherwise stated in the NRC condition.

ASME Code Cases may be revised for many reasons, e.g., to incorporate operational examination and testing experience and to update material requirements based on research result. On occasion, an inaccuracy in an equation is discovered or an examination, as practiced, is found not to be adequate to detect a newly discovered degradation mechanism. Hence, when an applicant or a licensee initially implements a code case, 10 CFR 50.55a requires that the applicant or the licensee implement the most recent version of that code case as listed in the RGs incorporated by reference. Code cases superseded by revision are no longer acceptable for new application unless otherwise indicated.

Section III of the ASME BPV Code applies only to new construction (i.e., the edition and addenda to be used in the construction of a plant are selected based on the date of the construction permit and are not changed thereafter, except voluntarily by the applicant or the licensee). Hence, if a Section III code case is implemented by an applicant or a licensee and a later version of the code case is incorporated by reference into § 50.55a and listed in the RGs, the applicant or the licensee may use either version of the code case (subject, however, to whatever change requirements apply to its licensing basis, e.g., 10 CFR 50.59).

A licensee's ISI and OM IST programs must be updated every 10 years to the latest edition and addenda of Section XI and the OM Code, respectively, that were incorporated by reference to 10 CFR 50.55a and in effect 12 months prior to the start of the next inspection and testing interval. Licensees who were using a code case prior to the effective date of its revision may continue to use the previous version for the remainder of the 120-month ISI or IST interval. This relieves licensees of the burden of having to update their ISI or IST program each time a code case is revised by the ASME and approved for use by the NRC. Since code cases apply to specific editions and addenda and since code cases may be revised because they are no longer accurate or adequate, licensees choosing to continue using a code case during the subsequent ISI interval must implement the latest version incorporated by reference into 10 CFR 50.55a and listed in the RGs.

The ASME may annul code cases that are no longer required, are determined to be inaccurate or inadequate, or have

been incorporated into the BPV or OM Codes. If an applicant or a licensee applied a code case before it was listed as annulled or expired, the applicant or the licensee may continue to use the code case until the applicant or the licensee updates its construction Code of Record (in the case of an applicant, updates its application) or until the licensee's 120-month ISI/IST update interval expires, after which the continued use of the code case is prohibited unless NRC approval is granted under 10 CFR 50.55a(a)(3). If a code case is incorporated by reference into 10 CFR 50.55a and later annulled by the ASME because experience has shown that the design analysis, construction method, examination method, or testing method is inadequate; the NRC will amend 10 CFR 50.55a and the relevant RG to remove the approval of the annulled code case. Applicants and licensees should not begin to implement such annulled code cases in advance of the rulemaking.

Concurrent with this action, the NRC is publishing in the **Federal Register** Notices of availability of these RGs listing acceptable ASME BPV Code Cases.

##### *Paragraph 50.55a(b)*

In paragraphs (b), and (b)(4) of 10 CFR 50.55a, the reference to the revision number for RG 1.84 would be changed from "Revision 34" to "Revision 35." In paragraph (b)(5) of 10 CFR 50.55a, the reference to the revision number for RG 1.147 would be changed from "Revision 15" to "Revision 16.";

*Paragraph 50.55a(f)(2), (f)(3)(iii)(A), (f)(3)(iv)(A), (f)(4)(ii), (g)(2), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(4)(ii)*

In paragraphs (f)(2), (f)(3)(iii)(A), (f)(3)(iv)(A), (f)(4)(ii), (g)(2), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(4)(ii) of 10 CFR 50.55a, the reference to the revision number for RG 1.147 would be changed from "Revision 15" to "Revision 16."

#### **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 PDR is located at 11555 Rockville Pike, Public File Area O-1F21, Rockville, Maryland 20852.

Federal e-Rulemaking Portal. The Web site is located at <http://regulations.gov>.

*The NRC's Public Electronic Reading Room.* The NRC's public electronic reading room is located at <http://www.nrc.gov/reading-rm.html>.

TABLE 2

Document	PDR	Web	e-Reading room
Proposed Rule—Regulatory Analysis .....	X	X	ML082540559
RG 1.84, Revision 35 (DG1191) .....	X	X	ML080910389
RG 1.147, Revision 16 (DG1192) .....	X	X	ML080910245
RG 1.193, Revision 2 (DG1193) .....	X	X	ML080920854

**Voluntary Consensus Standards**

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires agencies to use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such standards is inconsistent with applicable law or is otherwise impractical. In this action, the NRC is amending its regulations to incorporate by reference RGs that list ASME BPV Code Cases approved by the NRC. ASME Code Cases, which are ASME-approved alternatives to the provisions of ASME Code editions and addenda, are national consensus standards as defined in Public Law 104–113 and OMB Circular A–119. They are developed by bodies whose members (including the NRC and utilities) have broad and varied interests.

The NRC reviews each Section III and Section XI Code Case published by the ASME to ascertain whether it is consistent with the safe operation of nuclear power plants. Those code cases found to be generically acceptable are listed in the RGs that are incorporated by reference in 10 CFR 50.55a(b). Those that are found to be unacceptable are listed in RG 1.193, but licensees may still seek NRC’s approval to apply these code cases through the relief request process permitted in 10 CFR 50.55a(a)(3). Other code cases, which the NRC finds to be conditionally acceptable, are also listed in the RGs that are incorporated by reference along with the conditions under which they may be applied. If the NRC did not conditionally accept ASME code cases, it would disapprove these code cases entirely. The effect would be that licensees would need to submit a larger number of relief requests, which would be an unnecessary additional burden for both the licensee and the NRC. For these reasons, the treatment of ASME BPV and OM Code Cases and any conditions proposed to be placed on them in this proposed rule does not conflict with any policy on agency use of consensus standards specified in OMB Circular A–119.

**Finding of No Significant Environmental Impact: Environmental Assessment**

This proposed action stems from the Commission’s practice of incorporating by reference the RGs listing the most recent set of NRC-approved ASME code cases. The purpose of this proposed action is to allow licensees to use the code cases listed in the RGs as alternatives to requirements in the ASME BPV Code for the construction and ISI of nuclear power plant components. This proposed action is intended to advance the NRC’s strategic goal of ensuring adequate protection of public health and safety and the environment. It also demonstrates the agency’s commitment to participate in the national consensus standards process under the National Technology Transfer and Advancement Act of 1995, Public Law 104–113.

The National Environmental Policy Act (NEPA) requires Federal government agencies to study the impacts of their “major Federal actions significantly affecting the quality of the human environment” and prepare detailed statements on the environmental impacts of the action and alternatives to the action (United States Code, Vol. 42, Section 4332(C) [42 U.S.C. Sec. 4332(C)]; NEPA Sec. 102(C)).

The Commission has determined under NEPA, as amended, and the Commission’s regulations in Subpart A of 10 CFR Part 51 that this proposed rule would not be a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

As alternatives to the ASME Code, NRC-approved code cases provide an equivalent level of safety. Therefore, the probability or consequences of accidents is not changed. There are also no significant, non-radiological impacts associated with this action because no changes would be made affecting non-radiological plant effluents and because no changes would be made in activities that would adversely affect the environment. The determination of this environmental assessment is that there will be no significant offsite impact to the public from this proposed action.

**Paperwork Reduction Act Statement**

This proposed rule increases the burden on licensees applying ASME Code Case N–730 to maintain repair records of the current control drive bottom head penetrations in BWRs for the life of the reactor vessel (10 CFR 50.55a). The public burden for this information collection is estimated to average 5 hours per request. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the OMB approval number 3150–0011.

**Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection unless the requesting document displays a currently valid OMB control number.

**Regulatory Analysis**

The ASME Code Cases listed in the RGs to be incorporated by reference provide voluntary alternatives to the provisions in the ASME BPV Code for design, construction, and ISI of specific structures, systems, and components used in nuclear power plants. Implementation of these code cases is not required. Licensees use NRC-approved ASME Code Cases to reduce unnecessary regulatory burden or gain additional operational flexibility. It would be difficult for the NRC to provide these advantages independently of the ASME Code Case publication process without expending considerable additional resources. The NRC has prepared a regulatory analysis addressing the qualitative benefits of the alternatives considered in this proposed rulemaking and comparing the costs associated with each alternative. The regulatory analysis is available for inspection on public computers in the NRC PDR, located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Room O–1 F21. Copies of the regulatory analysis are also available to the public as indicated under the Availability of Documents heading in this preamble.

### Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this proposed rule would not impose a significant economical 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 are not "small entities" as defined in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

### Backfitting Analysis

The provisions in this proposed rulemaking would allow licensees to voluntarily apply NRC-approved code cases, sometimes with conditions. The voluntary implementation of an approved code case would not constitute a backfit. Thus, the Commission finds that this proposed rule does not involve any provisions that constitute a backfit as defined in 10 CFR 50.109(a)(1) and that a backfit rule is not required. Accordingly, a backfit analysis has not been prepared for this rulemaking.

### List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Incorporation by reference, 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 proposes 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 is revised 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); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 194 (2005).

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. 5841), Section 50.10 also issued under secs. 101, 185, 68 Stat. 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(d), 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). Section 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, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 50.55a is amended by revising the introductory text of paragraphs (b), (b)(4), and (b)(5), and paragraphs (f)(2), (f)(3)(iii)(A), (f)(3)(iv)(A), (f)(4)(ii), (g)(2), (g)(3)(i), (g)(3)(ii), (g)(4)(i) and (g)(4)(ii) to read as follows:

#### § 50.55a Codes and Standards.

\* \* \* \* \*

(b) The ASME Boiler and Pressure Vessel Code and the ASME Code for Operation and Maintenance of Nuclear Power Plants, which are referenced in paragraphs (b)(1), (b)(2), and (b)(3) of this section, were approved for incorporation by reference by the Director of the Office of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. NRC Regulatory Guide 1.84, Revision 35, "Design, Fabrication, and Materials Code Case Acceptability, ASME Section III" [temporarily designated DG–1191]; NRC Regulatory Guide 1.147, Revision 16, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1" [temporarily designated DG–1192]; and Regulatory Guide 1.192, "Operation and Maintenance Code Case Acceptability, ASME OM Code," (June 2003), have been approved for incorporation by reference by the Director of the Office of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These Regulatory Guides list ASME Code cases that the NRC has approved in accordance with the requirements in paragraphs (b)(4), (b)(5), and (b)(6) of this section. Copies of the ASME Boiler and Pressure Vessel Code and the ASME Code for Operation and Maintenance of Nuclear Power Plants may be purchased from the American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016. Single copies of NRC Regulatory Guides 1.84, Revision 35; 1.147, Revision 16; and 1.192 may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S.

Nuclear Regulatory Commission, Washington, DC 20555–0001; or by fax to 301–415–2289; or by e-mail to [Distribution.Resource@nrc.gov](mailto:Distribution.Resource@nrc.gov). Copies of the ASME Codes and NRC Regulatory Guides incorporated by reference in this section may be inspected at the NRC Technical Library, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852–2738, 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/code-of-federal-regulations/ibr-locations.html>.

\* \* \* \* \*

(4) *Design, Fabrication, and Materials Code Cases.* Applicants and licensees may apply the ASME Boiler and Pressure Vessel Code cases listed in NRC Regulatory Guide 1.84, Revision 35 without prior NRC approval subject to the following:

\* \* \* \* \*

(5) *In-service Inspection Code Cases.* Licensees may apply the ASME Boiler and Pressure Vessel Code cases listed in Regulatory Guide 1.147, Revision 16, without prior NRC approval subject to the following:

\* \* \* \* \*

(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 and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 16; or Regulatory Guide 1.192 that are incorporated by reference in paragraph (b) of this section) in effect 6 months before 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 listed in NRC Regulatory Guide 1.147, Revision 16; or Regulatory Guide 1.192 that are incorporated by reference in paragraph (b) 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 the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 16; or Regulatory Guide 1.192 that are incorporated by reference in paragraph (b) 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 the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in NRC Regulatory Guide 1.147, Revision 16, that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular pump or valve or the Summer 1973 Addenda, whichever is later.

\* \* \* \* \*

(4) \* \* \*

(ii) Inservice tests to verify operational readiness of pumps and valves, whose function is required for safety, conducted during successive 120-month intervals must comply with the requirements of the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section 12 months before the start of the 120-month interval (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 16; or Regulatory Guide 1.192 that are incorporated by reference in paragraph (b) of this section), subject to the conditions listed in paragraph (b) of this section.

\* \* \* \* \*

(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 and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 16, that are incorporated by reference in paragraph (b) of this section) in effect 6 months before the date of issuance of the construction permit. The components (including supports) may meet the requirements set forth in subsequent editions and addenda of this Code which are incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 16, that are incorporated by reference in paragraph (b) 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 these components and must meet the preservice examination requirements set forth in the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 16, that are incorporated by reference in paragraph (b) 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 these components and must meet the preservice examination requirements set forth in the editions and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of this section (or the optional ASME Code Cases listed in NRC Regulatory Guide 1.147, Revision 16, that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular component.

\* \* \* \* \*

(4) \* \* \*

(i) Inservice examination of components and system pressure tests

conducted during the initial 120-month inspection interval must comply with the requirements in the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section on the date 12 months before the date of issuance of the operating license (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 16, that are incorporated by reference in paragraph (b) of this section, subject to the conditions listed in paragraph (b) of this section.

(ii) Inservice examination of components and system pressure tests conducted during successive 120-month inspection intervals must comply with the requirements of the latest edition and addenda of the Code incorporated by reference in paragraph (b) of this section 12 months before the start of the 120-month inspection interval (or the optional ASME Code cases listed in NRC Regulatory Guide 1.147, Revision 16, that are incorporated by reference in paragraph (b) of this section), subject to the conditions listed in paragraph (b) of this section.

\* \* \* \* \*

Dated at Rockville, Maryland, this 12th day of May 2009.

For the Nuclear Regulatory Commission

**R.W. Borchardt,**

*Executive Director for Operations.*

[FR Doc. E9-12751 Filed 6-1-09; 8:45 am]

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**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 72**

**RIN 3150-A160**

**[NRC-2009-0132]**

**List of Approved Spent Fuel Storage Casks: HI-STORM 100 Revision 6**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its spent fuel storage cask regulations by revising the Holtec International HI-STORM 100 dry storage cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 6 to Certificate of Compliance (CoC) Number 1014. Amendment No. 6 would modify the CoC to add instrument tube tie rods used for pressurized water reactor 15x15 and 17x17 fuel lattices, for both intact and damaged fuel assemblies, to the approved contents of the MPC-24, MPC-24E, MPC-24EF, MPC-32, and