

# Rules and Regulations

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## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Part 1201

#### Practices and Procedures

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Interim rule.

**SUMMARY:** The Merit Systems Protection Board (MSPB or the Board) is amending its practices and procedures regulations to make clear that the Board may, in its discretion, include discussion of issues raised in an appeal in a nonprecedential Final Order.

**DATES:** *Effective date:* October 5, 2010. Submit written comments on or before November 4, 2010.

**ADDRESSES:** Send comments to William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653-7200; fax: (202) 653-7130; or e-mail: [mspb@mspb.gov](mailto:mspb@mspb.gov).

**FOR FURTHER INFORMATION CONTACT:** William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653-7200; fax: (202) 653-7130; or e-mail: [mspb@mspb.gov](mailto:mspb@mspb.gov).

**SUPPLEMENTARY INFORMATION:** This amendment, adding a new paragraph (c) to 5 CFR 1201.117, which reflects recent changes in the Board's internal procedures, is intended to give the parties greater insight into the reasoning supporting the Board's decision in a particular case without requiring the Board to issue a precedential decision. The Board believes that including more information in its nonprecedential decisions will be beneficial to both appellants and agencies because both parties will more fully understand the Board's reasoning and have added assurance that the Board fully considered their arguments on appeal.

This amendment to 5 CFR 1201.117 also revises paragraph (b) to make clear that the Board may issue a final decision and, when appropriate, order a date for compliance with that decision.

#### List of Subjects in 5 CFR Part 1201

Administrative practice and procedure.

■ Accordingly, the Board amends 5 CFR part 1201 as follows:

#### PART 1201—[AMENDED]

**Authority:** 5 U.S.C. 1204 and 7701, unless otherwise noted.

■ 1. Revise § 1201.117 to read as follows:

#### § 1201.117 Board action on petition for review or reopening.

(a) In any case that is reopened or reviewed, the Board may:

- (1) Issue a decision that denies or grants a petition for review, modifies or supplements an initial decision, or reopens an appeal, and decides the case;
- (2) Hear oral arguments;
- (3) Require that briefs be filed;
- (4) Remand the appeal so that the judge may take further testimony or evidence or make further findings or conclusions; or
- (5) Take any other action necessary for final disposition of the case.

(b) The Board may affirm, reverse, modify, supplement, or vacate the initial decision of a judge, in whole or in part. The Board may issue a final decision and, when appropriate, order a date for compliance with that decision.

(c) The Board may issue a final decision in the form of a Final Order or an Opinion and Order. In the Board's sole discretion, a Final Order may, but need not, include additional discussion of the issues raised in the appeal. All Final Orders are nonprecedential and may not be cited or referred to except by a party asserting issue preclusion, claim preclusion, collateral estoppel, res judicata, or law of the case. Only an Opinion and Order is a precedential decision of the Board, and an Opinion and Order may be appropriately cited or referred to by any party.

Dated: September 29, 2010.

**William D. Spencer,**  
*Clerk of the Board.*

[FR Doc. 2010-24864 Filed 10-4-10; 8:45 am]

**BILLING CODE 7400-01-P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

[NRC 2009-0014]

RIN 3150-AI37

#### Domestic Licensing of Production and Utilization Facilities; Updates to Incorporation by Reference of Regulatory Guide

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

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending its regulations to incorporate by reference the latest revisions of two previously incorporated regulatory guides (RGs) approving new and revised Code Cases published by the American Society of Mechanical Engineers (ASME). The RGs which are incorporated by reference 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 allows nuclear power plant licensees, and applicants for standard design certifications, standard design approvals, and manufacturing licenses under the regulations that govern license certifications, and approves the nuclear power plants to use 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**. As a result of these related actions, the Code Cases listed in these RGs are incorporated by reference into the NRC's regulations and are deemed to be legally-binding NRC requirements.

**DATES:** The rule is effective on November 4, 2010. The incorporation by reference of RG 1.84, "Design, Fabrication, and Materials Code Case Acceptability, ASME Section III," Revision 35 (July 2010), and RG 1.147, "Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1," Revision 16 (July 2010) is approved by the Director of the Office