Rules and Regulations

Federal Register
Vol. 68, No. 130
Tuesday, July 8, 2003

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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: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to incorporate by reference NRC Regulatory Guides listing Code cases published by the American Society of Mechanical Engineers (ASME) which the NRC has reviewed and found to be 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 construction, inservice inspection and inservice testing of nuclear power plant components. This action incorporates by reference three regulatory guides that address NRC review and approval of ASME-published Code cases. Therefore, the Code cases listed in these regulatory guides are incorporated by reference into the NRC's regulations.

EFFECTIVE DATE: August 7, 2003. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Office of the Federal Register as of August 7, 2003.

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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 26, 2002 (67 FR 60520), to incorporate by reference the 1998 Edition of these Codes, up to and including the 2000 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 alternatives to the requirements of the ASME BPV Code and the OM Code. In the past the NRC staff's practice was to review these Code cases and find them either acceptable, conditionally acceptable, or unacceptable for use by NRC licensees. These Code cases were then listed in periodically revised regulatory guides (RGs), together with information on their acceptability. Footnote 6 to § 50.55a referred to those RGs listing Code cases determined by the staff to be ''suitable for use.'' However, the publication dates and version numbers of the RGs were not specified in Footnote 6 and these RGs had not been approved by the Director of the *Office of the Federal Register* (OFR) for incorporation by reference into the Code of Federal Regulations.

Discussion

The NRC identified a concern with the practice of generally referencing the RGs addressing ASME Code cases in Footnote 6 to § 50.55a. The notice and comment provisions of the Administrative Procedure Act (APA) (5 U.S.C. 551 *et seq.*), as amended, were arguably not satisfied by this practice. To address this matter, on March 19, 2002 (67 FR 12488), the NRC published a proposed amendment to revise § 50.55a to incorporate by reference the regulatory guides which list the ASME Code cases approved or conditionally approved by the NRC.

This final rule amends 10 CFR 50.55a(b) to incorporate by reference the RGs listing ASME BPV and OM Code cases which are approved for use by NRC licensees (including their revision numbers) into Title 10 of the Code of Federal Regulations. The text of existing Footnote 6 to § 50.55a is deleted and all references to Footnote 6 in § 50.55a have been removed and replaced by language that specifies, where appropriate, that the optional ASME Code cases that are incorporated by reference in § 50.55a(b) may be applied in lieu of the corresponding requirements of the ASME Codes. Sections 50.55a(b)(4), (b)(5), and (b)(6), which specify limitations upon the implementation of approved ASME Code cases, have been added.

Over the past several years, NRC licensees have expressed their dissatisfaction about the length of time it takes the NRC to review and approve Code cases. 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. The NRC will issue the draft RGs for comment before issuance of the final RGs. At approximately the time each set of final guides is issued, the NRC will also issue the next set of proposed guides. Second, the NRC will conduct rulemakings to incorporate by reference the revised RGs into § 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 any significant questions of policy, they will be issued 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 these rulemakings without preparing a rulemaking plan. If the rulemakings are not controversial and significant adverse comment is not expected, the NRC will incorporate by reference future revisions of the RGs through the issuance of direct final rules. These actions should expedite the NRC process for reviewing and approving ASME Code cases.

Resolution of Public Comments

In response to the publication of the proposed rule, the NRC received eight letters commenting on various aspects of the rulemaking. The letters came from utilities, law firms representing utilities, and the Nuclear Energy Institute (NEI). NEI sent a second letter to supplement its first letter. The following sections address the various issues raised by the public commenters.

1. Comment

On December 28, 2001 (66 FR 67335), the NRC published a notice of the availability of proposed revisions to RGs 1.84 and 1.147 and a new proposed RG [temporarily designated DG–1089 but subsequently given a permanent designation of RG 1.192] and solicited public comments. One rule commenter that had responded to the December 28, 2001, notice requests that the NRC consider the comments he submitted on the proposed regulatory guides as part of this rulemaking.

Response

The NRC has considered the public comments received in response to its December 28, 2001, notice and has resolved those comments by modifying the guides, as appropriate, or providing its rationale for not doing so. The public comments received and the NRC resolution of the comments on the guides is available to the public as indicated in the ''Availability of Documents'' section of these statements of consideration. The NRC finds no reason to further consider those comments as part of this rulemaking.

2. Comment

One commenter believes that as an alternative to this rulemaking, the NRC should consider developing a Web site (1) where the individual Code cases could be posted for public comment and for subsequent NRC acceptance (identifying any limitations on or exceptions to the use of the Code cases), or (2) where revisions to the RGs could be posted for comment each time the NRC proposes to endorse a Code case. Either method would allow individual Code cases to be reviewed by the NRC, posted for public comment, and accepted for use by licensees within 3-to-6 months of the ASME publication of the Code case, as compared to the 3-to-5 years between past revisions of the RGs.

Response

The commenter's suggestion does not appear to be in compliance with the notice and comment provisions of the APA. The APA requires notice of proposed rulemaking to be published in the **Federal Register**. As discussed earlier, the Code cases listed in the RGs to be incorporated by reference provide alternatives to compliance with the ASME Codes, which are rules by virtue of their incorporation by reference into § 50.55a. Accordingly, it is the NRC's view that any generally applicable alternatives to the endorsed ASME Codes must be considered requirements, and are therefore subject to the notice and comment requirements of the APA.

3. Comment

Some commenters state that the NRC's regulations already allow ''generic'' approval of Code cases as alternatives to the requirements in § 50.55a. In accordance with § 50.55a(a)(3), alternatives ''may be used when authorized by the Director of the Office of Nuclear Reactor Regulation'' if the alternatives provide an acceptable level of quality and safety. Several commenters believe that the NRC's acceptance on a generic basis could be authorized in a generic communication, such as a regulatory issue summary. These commenters recommend that if the NRC determines that the current provisions do not allow a generic approval in this manner, the NRC should provide a generic approval process similar to § 50.55a(a)(3) that would not require continued rulemaking for endorsement of Code cases.

Response

The NRC does not agree that the provisions in § 50.55a(a)(3) provide for generic approval of Code cases. This paragraph allows licensees, on a license-specific basis, to request NRC's review and approval of alternatives to the requirements in the ASME Codes. The purpose of § 50.55a(a)(3) is to provide a mechanism for individual licensees to request approval to implement measures (including Code cases) not generically approved by the NRC in order to meet specific licensee needs. The NRC does not believe that it may through rulemaking adopt a procedure for ''generically'' approving alternatives to ASME Code provisions which are incorporated by reference in § 50.55a if the procedure does not meet the requirements for rulemaking or an ''order'' under the APA.

4. Comment

While acknowledging that the recommendation is beyond the scope of this rulemaking, one commenter suggests that the NRC explore whether § 50.55a should be revised to no longer reference the editions and addenda of the ASME Code. The editions and addenda of the Code and the Code cases could be put into RGs which provide a means by which the revised regulation could be met. The commenter believes that both the editions and addenda of the Code sections and Code cases could be approved more efficiently in this manner.

Response

The NRC previously considered this approach but rejected it because of the difficulty, the length of time, and substantial resources that would be necessary to develop a rule that sets forth general requirements for inservice inspection (ISI), inservice testing (IST), and the construction of nuclear power plant components. The NRC agrees that if the rule were revised to no longer incorporate the ASME Codes by reference, then this rulemaking to approve Code cases would not be necessary. However, as a practical matter, to avoid imposing a backfit, the rule would likely have to include a grandfather provision that would allow licensees to use current ASME Code requirements already incorporated by reference into § 50.55a. Thus, the NRC would still be faced with the task of conducting rulemakings to approve Code cases for the grandfathered licensees.

5. Comment

Several commenters urge the NRC to expedite the process for reviewing and approving ASME Code cases. One commenter believes that the proposed rule is inconsistent with the NRC strategic goal of improving the efficiency of the regulatory process. Alternative approaches for streamlining the process should be explored.

Response

The NRC agrees that the process of approving ASME BPV and OM Code cases through incorporation by reference into the regulations is cumbersome and that a more efficient process would better satisfy the NRC's goal of streamlining the regulatory process. As mentioned in the Discussion section of these statements of consideration, the NRC is planning several actions that it believes will improve the timeliness of the incorporation by reference process. Other actions to improve the efficiency of the Code case approval process are discussed in the Resolution of Public Comments on Guides document published in conjunction with the publication of the RGs in question (*see* ''Availability of Documents'' section). However, any streamlining of the process must comply with applicable law.

6. Comment

One commenter recommends that, if the NRC believes it must use the rulemaking process to incorporate by reference its Code case approvals, maximum use should be made of the direct final rule process to enable

licensees to implement Code cases sooner.

Response

The NRC agrees with this comment and is considering the feasibility of taking this approach with future rulemakings of this type. Direct final rules are published together with companion proposed rules containing the identical regulations. If there is no significant adverse public comment on the direct final rule during the comment period, the rule becomes a final rule within a specified number of days after publication. If one or more significant adverse comment is received, the direct final rule is withdrawn and the proposed rule is treated as though no direct final rule had been published. There is no further opportunity for public comment. However, the NRC cautions that the RGs in question may control the timeliness in this matter. Unless a method to streamline the RG publication process is developed, efficiencies arrived at by using direct final rules may be minor.

7. Comment

Several commenters object to the wording in proposed § 50.55a(i)(2)(ii), as well as the parallel wording of §§ 50.55a (i)(3)(ii) and (i)(4)(ii). The proposed language would require that users of a Code case implement newly approved versions of the Code case along with any modifications or limitations. The commenters argue that this is inconsistent with the existing requirements in §§ 50.55a (f)(4)(ii) and (g)(4)(ii), which permit licensees to defer implementation of new ASME Code criteria.

Response

The NRC agrees that the proposed rule language would require licensees who have implemented a Code case to implement additional modifications and limitations if the Code case is revised in the future. In general, this is contrary to NRC's intention. The NRC intends that once an approved Code case is implemented by an applicant or licensee, it may continue to apply the Code case until it updates its Code of Record for the component being constructed or until the end of the licensee's current 120-month ISI or IST update interval, as applicable. Accordingly, the proposed rule language has been modified in the final rule §§ 50.55a (b)(4)(ii), (b)(5)(ii), and (b)(6)(ii) (corresponding to §§ 50.55a (i)(2)(ii), (i)(3)(ii), and (i)(4)(ii) in the proposed rule) to clarify the NRC's intention in this regard. An exception to this would be when the NRC's initial approval of the Code case by a specific licensee is conditioned by including language that requires the licensee to apply any limitations or conditions specified in a revised RG that approves that Code case. Accordingly, the final rule states that the licensee may apply the previous version of the Code case ''as authorized,'' which refers to the NRC's condition in the initial approval of the Code case for use by a specific licensee.

8. Comment

One commenter states that proposed § 50.55a(i)(2)(iv) is not ''conducive to'' use with repair/replacement activities under Section XI of the ASME Code and the Section XI Code cases. Replacement items are procured over time and many different editions and addenda of Section III may be referenced for different items. Therefore, the phrase in the proposed rule ''* * * until the licensee updates its Section III Code of Record'' could be interpreted as referring to a singular event rather than an action that occurs many times. Adding the phrase ''for the item being constructed'' would clarify that a licensee can use an annulled Code case until it procures the specific item to an updated Section III.

The commenter is also concerned about situations in which the licensee implements a Code case to a certain edition of the Code, but later updates his Code of Record to a later edition of the Code. In some instances the updated Code of Record will not have the Code case approved because it has been incorporated into the Code. The commenter recommends the following wording to resolve both concerns: ''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 for the item being constructed to an edition or addenda of Section III that has incorporated the case.''

Response

The NRC agrees with these comments and has amended § 50.55a(b)(4)(iii) in the final rule to read as the commenter suggests with some further clarifications, as follows: ''Application of an annulled Code case is prohibited unless an applicant or licensee applied the listed Code case prior to it being listed as annulled in Regulatory Guide 1.84. If an applicant or licensee has applied a listed Code case that is later listed as annulled in Regulatory Guide 1.84, the applicant or licensee may continue to apply the Code case until it updates its Code of Record for the component being constructed.''

9. Comment

A commenter requests that the NRC retain Footnote 6 of § 50.55a and amend it to reference a new RG which is temporarily designated as DG–1112. Although this RG, which has been designated NRC Regulatory Guide 1.193, lists Code cases that the NRC has reviewed and not approved, the commenter believes that it would be useful to licensees because they could still implement the Code cases through the provisions of § 50.55a(a)(3), if the NRC's concerns are adequately resolved.

Response

The NRC does not believe that it is appropriate to reference RGs that list disapproved ASME Code cases. The fact the NRC has not incorporated a Code case by reference simply means that the Code case has not received generic NRC approval, and therefore may not be applied without prior NRC review and approval. Referencing RGs which list disapproved Code cases may give the appearance that the NRC has generically disapproved the Code cases in question, which is incorrect. As the commenter points out, disapproved Code cases may be proposed through the relief request process permitted by § 50.55a(a)(3). Also, the NRC does not believe that the lack of a reference to Regulatory Guide 1.193 presents a hardship to licensees. Licensees are generally aware of its existence and availability and may make use of it as they see fit. Thus, the final rule does not reference this RG.

10. Comment

Several commenters recommend that the incorporation by reference of the RGs listing the NRC-approved ASME BPV and OM Code cases be placed in § 50.55a(b), instead of in a new § 50.55a(i) as in the proposed rule, because of the similarity of the requirements.

Response

During the preparation of the proposed rule, the staff considered several options for integrating the incorporation by reference of the RGs with the remaining requirements in § 50.55a and sought public comment on this question. The staff agrees with the commenters that incorporation by reference of the RGs listing NRC-approved Code cases should be co-located with the incorporation by reference of the various ASME BPV and OM Code editions and addenda. Thus, this final rule expands § 50.55a(b) to include the incorporation by reference

of the RGs and adds paragraphs (b)(4), (b)(5), and (b)(6) to specify the implementation requirements.

11. Comment

Sections 50.55a(i)(2)(iv), 50.55a(i)(3)(iv), and 50.55a(i)(4)(iv) of the proposed rule state that licensees could no longer apply an NRC-approved annulled Code case if the NRC later determines the Code case is unacceptable for use and revises § 50.55a or the applicable regulatory guide (1.84, 1.147, or 1.192) to prohibit continued application of the annulled Code case. Several commenters state that revising § 50.55a or the applicable regulatory guide (1.84, 1.147, or 1.192) to prohibit continued application of the NRC-approved annulled Code case for the remainder of the interval is a backfit.

Response

The NRC agrees that any revision to § 50.55a prohibiting the continued application of an annulled Code case for the remainder of an interval would be a backfit that must be justified in accordance with § 50.109. In order to avoid confusion, the requirement in the proposed rule prohibiting the continued application of an annulled Code case previously approved by the NRC is deleted in the final rule. However, if in the future, an NRC-approved Code case is annulled, allowed to expire, or revised because the Code case is no longer adequate, the NRC will consider amending § 50.55a and the applicable regulatory guide to prohibit continued application of the Code case. The NRC will justify the revision to § 50.55a in accordance with the requirements in § 50.109.

12. Comment

Several commenters recommend that the phrase, ''or the optional ASME Code cases listed in the RGs incorporated by reference in paragraph (i) of this section'' be added in six other paragraphs in § 50.55a where reference is made to the use of ASME BPV or OM Code provisions.

Response

The phrase in question occurred in various locations of § 50.55a in the proposed rule where the regulations in the current rule had referred the reader to Footnote 6 (which references the RGs listing approved Code cases). The NRC agrees with the commenter that the reference to the use of the optional ASME BPV and OM Code cases should also be included in the specified paragraphs. The NRC has modified §§ 50.55a(f)(3)(iii)(B), (f)(3)(iv)(B), (f)(4)(i), (f)(4)(ii), (g)(4)(i), and (g)(4)(ii), accordingly.

13. Comment

One commenter states that the incorporation by reference of the ASME Code cases in § 50.55a is unnecessary because the ASME issues Code cases as alternative rules applicable for a 3-year period, after which the Code cases are incorporated into the ASME Code, annulled, or renewed, and because § 50.55a has provisions for endorsement of future editions and addenda of the ASME Code. The commenter also believes the process is inefficient and unlawful because it introduces new regulatory positions without satisfying the requirements of the Backfit Rule, 10 CFR 50.109.

Response

The Commission agrees that once the provisions of a Code case are incorporated into an edition or addenda of the ASME BPV or OM Code, and those editions and addenda of the Codes are incorporated by reference, there is no need for incorporation by reference of those alternative requirements. However, from the time that the Code case is published by the ASME to the time it is listed in an incorporated edition or addenda of the Codes, there is no legal mechanism for the NRC to approve its use other than through the provisions of § 50.55a(a)(3) for requesting approval of alternatives. This requires a case-by-case review and approval, which is time consuming and wasteful of agency resources. Therefore, the Commission has determined that rulemaking approving the use of alternatives to the required ASME Code provisions specified in § 50.55a is the most efficient course of action that complies with applicable law.

This rulemaking contains no requirements that satisfy the definition of a backfit as specified in 10 CFR 50.109(a)(1). The initial application of a Code case is voluntary on the part of the licensee. Absent approval of the NRC, either on a license-specific basis or through a generic rulemaking, a licensee is not legally authorized to use an ASME Code case. Hence, any limitations on the use of Code cases are not backfits as defined in § 50.109(a)(1).

14. Comment

Several commenters believe that the NRC is acting contrary to the intent of Congress in passing the National Technology Transfer and Advancement Act of 1995, (Pub. L. 104–113), which was implemented through Office Management and Budget (OMB) Circular A–119 and NRC Management Directive 6.5, ''NRC Participation on Development and Use of Consensus Standards.'' These commenters believe the NRC has not identified regulations that are in direct conflict with the published Code case or documented a regulatory basis for imposing limitations or modifications.

Response

The NRC does not agree with the commenters' opinion that the NRC has not fully complied with the letter and intent of Public Law 104–113 and the associated guidance. Public Law 104–113, requires that Federal agencies use technical standards that are developed by voluntary consensus standards bodies unless the use of these standards is inconsistent with applicable law or is otherwise impractical. The statute does not require Federal agencies to endorse a standard in its entirety, nor does it forbid Federal agencies to endorse industry consensus standards with limitations or modifications, if the agencies deem the provisions of the standards to be inconsistent with applicable law or otherwise impractical. Endorsing a voluntary consensus standard with limitations, modifications, or exceptions furthers the congressional intent of Federal reliance on voluntary consensus standards by allowing the adoption of substantial portions of consensus standards. Agencies need not reject the standards in their entirety because a few provisions are not acceptable. Moreover, there is no legislative history suggesting that Congress intended agencies to take an ''all or nothing'' approach to the endorsement of voluntary consensus standards under the Act, and the OMB guidance implementing Public Law 104–113 does not address the matter. The discussions of the limitations and modifications in the RGs and the document on the Resolution of Public Comments on the RGs are sufficient to satisfy the requirements of section 12(d)(3) of Public Law 104–113, and the relevant requirements of OMB Circular A–119 (1998).

15. Comment

According to one commenter the proposed rulemaking is unlawful because it is not in compliance with the Backfit Rule, 10 CFR 50.109. (The commenter provided no explanation of why the proposed rule is in conflict with the Backfit Rule.)

Response

Section 50.109(a)(2) requires that the NRC perform a backfit analysis for any backfits, as defined in § 50.109(a)(1), that it seeks to impose, unless the

backfits fall into one or more of the delineated exceptions. A backfit is a modification of or addition to systems, components, or design of a facility, or the design approval or manufacturing license, or procedures or organization required to design, construct or operate a facility, any of which may result from a new or amended provision in the Commission's rules or the imposition of a staff regulatory position interpreting the Commission rules that is either new or different from previously applicable staff positions. As discussed in the responses to Comments 11 and 13, the Commission finds that this final rule does not contain any requirements which satisfy the definition of a backfit, and consequently, a backfit analysis is not required.

16. Comment

One commenter states that when Code cases are interpretive of the regulations (or provide an alternative means for achieving compliance with a requirement), they need not be incorporated by reference and that licensees should be permitted to use them with no further NRC action.

Response

The NRC agrees that Code cases that are purely interpretations of the regulations incorporated by reference in § 50.55a(b) need not be incorporated by reference. However, the Code cases incorporated by reference in § 50.55a, with or without modifications or limitations, constitute alternatives to the requirements in § 50.55a and not interpretations. Therefore, the NRC believes that incorporating the RGs by reference is the proper treatment of these alternative requirements.

Paragraph-by-Paragraph Discussion

On December 28, 2001 (66 FR 67335), the NRC published proposed revisions to RGs 1.84 and 1.147 and a new proposed RG [temporarily designated DG–1089]. The NRC has considered the public comments on these RGs and has resolved those comments by modifying the guides, as appropriate, or providing its rationale for not doing so. Previously, RG 1.84, Revision 31, listed only Section III Code cases related to design and fabrication, and RG 1.85, Revision 31, listed Section III Code cases related to materials and testing. Revision 32 to RG 1.84 lists for the first time in one guide all Section III Code cases that have been approved for use by the NRC. The staff intents to withdraw RG 1.85 when the ensuing revisions to the RGs are published. This rulemaking incorporates by reference Regulatory Guide 1.84, Revision 32, ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III,'' Regulatory Guide 1.147, through Revision 13, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' and Regulatory Guide 1.192, ''Operation and Maintenance Code Case Acceptability, ASME OM Code.''

1. Paragraph 50.55a(b)

In the proposed rule (March 19, 2002: 67 FR 12488), the language of incorporation by reference of the RGs and the implementation requirements were contained in a new postulated paragraph (i). The NRC requested public comment on the proposed placement of these requirements. As discussed in Comment 10 and the corresponding NRC response, the Commission has decided to place the incorporation by reference of the RGs listing NRC-approved ASME BPV and OM Code case in § 50.55a(b) and the corresponding implementation requirements in §§ 50.55a(b)(4), (b)(5), and (b)(6). In this manner, the incorporation by reference of the RGs listing NRC-approved Code cases would be located with the incorporation by reference of the editions and addenda of the ASME BPV and OM Codes and be more organizationally consistent. Thus § 50.55a(b) has been expanded and now contains the language of incorporation by reference of the RGs listing NRC-approved ASME BPV and OM Code cases and identifies each RG by title and revision number.

Section 50.55a(b) now specifies the applicable RGs for incorporation by reference in addition to the editions and addenda of the ASME Boiler and Pressure Vessel Code and Code for Operation and Maintenance of Nuclear Power Plants. This paragraph incorporates by reference NRC Regulatory Guide 1.84, Revision 32, NRC Regulatory Guide 1.147, through Revision 13, and NRC Regulatory Guide 1.192. This final rule incorporates all of the revisions of Regulatory Guide 1.147 because some licensees continue to apply Code cases listed as approved in earlier revisions to this RG and if these revisions were not incorporated by reference the further use of these Code cases would be prohibited. Similarly, Revision 14 of Regulatory Guide 1.147 will be incorporated by reference in the same fashion because it has already been prepared in draft form and major reformatting of that document would result in a substantial delay in issuing the final version. However, the NRC will format Revision 15 of Regulatory Guide 1.147 so that it provides the current status of all Section XI Code cases and at that time the incorporation by reference of previous revisions of that RG will be superceded.

The RGs incorporated by reference in this final rule 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 approved unconditionally, or with conditions and limitations specified by the NRC, as alternatives to specific Code provisions. NRC approval of the use of Code cases listed in these RGs is granted only if the limitations and conditions, if any, are applied.

Sections 50.55a(b)(4), (b)(5), and (b)(6) require that licensees or applicants initially applying a Code case which is listed in one of the RGs as acceptable apply the most recent version of the Code case listed in the RG. If a licensee or applicant is applying a particular version of an approved Section III Code case, and a later version is incorporated into the applicable RG as acceptable, the licensee or applicant may continue to apply the earlier version of the Code case until it updates its Code of Record for the component being constructed. A licensee may continue to apply the earlier version of a Section XI or OM Code case until the end of the licensee's current 120-month ISI or IST update interval, including any adjustments to the interval permitted under Paragraphs IWA–2430(c)(1) and (e) of Section XI of the ASME BPV Code or Paragraphs ISTA 2.2.3(d) and (e) of the OM Code.

Sections 50.55a (b)(4), (b)(5), and (b)(6) also specify that a licensee is permitted to apply an annulled or expired Code case provided that it has been applied before it has been listed as expired or annulled in RG 1.84, 1.147, or 1.192. A licensee implementing an approved Section III Code case that is subsequently listed as annulled or expired in RG 1.84 may continue to apply that Code case until it updates its Code of Record for the component being constructed. A licensee implementing an approved Section XI or OM Code case that is subsequently listed as annulled or expired in RG 1.147 or RG 1.192 may continue to apply that Code case until it updates its ISI or IST program to an edition or addenda of the Code that has incorporated the Code case. In most circumstances, a Code case is annulled or allowed to expire by the ASME because the Code case is included in a later edition or addenda of the ASME BPV or OM Codes. When a licensee updates its construction, ISI or IST Code of Record, the provisions of the Code can then be applied instead of the annulled or expired Code case. In any event, a licensee may continue to use the annulled or expired Code case

until the end of its 120-month ISI/IST interval or until it updates its construction Code of Record, unless the NRC specifically prohibits its continued use by modifying the RG or 10 CFR 50.55a and performing a backfit analysis in accordance with the provisions in 10 CFR 50.109.

In the proposed rule, §§ 50.55a(i)(2)(iv), (i)(3)(iv), and (i)(4)(iv) contained language implying that § 50.55a or the RGs could specifically prohibit the use of annulled Code cases. As noted in the Response to Comment 11, this language is unnecessary and has been removed in the final rule.

2. Paragraphs 50.55a(c)(3), (d)(2), and (e)(2)

Current references to Footnote 6 in §§ 50.55a(c)(3), (d)(2), and (e)(2) have been removed, and text has been added to indicate that the optional ASME Code cases referred to are those listed in the RGs that are incorporated by reference in § 50.55a(b).

3. Paragraphs 50.55a(f)(2), (f)(3)(iii)(A), (f)(3)(iv)(A), (g)(2), (g)(3)(i), and (g)(3)(ii)

Currently, §§ 50.55a(f)(2), (f)(3)(iii)(A), (f)(3)(iv)(A), (g)(2), (g)(3)(i), and (g)(3)(ii) do not specifically mention ASME Code cases but have a reference to Footnote 6. These references to Footnote 6 have been removed and text has been added to indicate that the optional ASME Code cases referred to are those listed in the RGs that are incorporated by reference in § 50.55a(b).

4. Paragraphs 50.55a(f)(3)(iii)(B), (f)(3)(iv)(B), (f)(4)(i), (f)(4)(ii), (g)(4)(i), and (g)(4)(ii)

Sections 50.55a(f)(3)(iii)(B), (f)(3)(iv)(B), (f)(4)(i), (f)(4)(ii), (g)(4)(i), and (g)(4)(ii) have been amended to indicate that the ASME Code cases listed in the RGs that are incorporated by reference in § 50.55a may be applied in lieu of corresponding ASME BPV or OM Code requirements.

5. Footnote 6, 10 CFR 50.55a

Footnote 6 has been removed from § 50.55a and the footnote number has been reserved. Footnote 6 to § 50.55a formerly stated that ASME Code cases suitable for use are listed in RGs 1.84, 1.85, and 1.147. These Code cases are now approved for use by specific language in §§ 50.55a(c)(3), (d)(2), (e)(2), (f)(2), (f)(3)(iii)(A), (f)(3)(iii)(B), (f)(3)(iv)(A), (f)(3)(iv)(B), (f)(4)(i), (f)(4)(ii), (g)(2), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(4)(ii). Footnote 6 also stated 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). This text is being removed because it is unnecessary; licensees continue to have the option of requesting approval to use Code cases not incorporated by reference into § 50.55a under § 50.55a(a)(3).

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, Public File Area O–1 F21, Rockville, Maryland.

Rulemaking Web site. The NRC's interactive rulemaking Web site is located at *http://ruleforum.llnl.gov.* The documents may be viewed and downloaded electronically via this Web site.

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

The NRC staff contact (NRC Staff). Single copies of the final rule, the regulatory analysis, the environmental assessment, and the 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 to: *hst@nrc.gov.*

Document	PDR	Web	PERR	NRC staff
Environmental Assessment	x	x	ML030690244	x
Regulatory Analysis	x	x	ML031490533	x
Regulatory Guide 1.192	x		ML030730430	x
Regulatory Guide 1.84, Revision 32	x		ML030730417	x
Regulatory Guide 1.147, Revisions 0 to 12	x		ML031560264	x
Regulatory Guide 1.147, Revision 13	x		ML030730423	x
Regulatory Guide 1.193	x		ML030730440	x
Resolution of Public Comments on Guides	x		ML030730448	x

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. The NRC is amending its regulations to incorporate by reference regulatory guides that list ASME BPV and OM Code cases which have been approved by the NRC. ASME Code cases, which are ASME-approved alternatives to the provisions of ASME Code editions and addenda, constitute 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.

These statements of consideration provide the reasons for modifying or limiting the applicability of ASME Code cases otherwise approved for use by the NRC as alternatives to current ASME Code provisions incorporated by reference into § 50.55a. The treatment of ASME BPV and OM Code cases, and modifications and conditions placed on them, in this final 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: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment, and, therefore, an environmental impact statement is not required.

This rulemaking will not significantly increase the probability or consequences of accidents; no changes are being made in the types of effluents that may be released off site; and there is no significant increase in public radiation exposure. Therefore, there are no significant environmental impacts

associated with the action. Therefore, the NRC determines that there will be no significant off site impact to the public from this action.

The basis for NRC's finding is set forth in an environmental assessment on this final rule. The environmental assessment is available as indicated in the Availability of Documents section under the Supplementary Information heading. The NRC requested the views of the States on the environmental assessment for the rule and did not receive any comments from the States.

Paperwork Reduction Act Statement

This final rule decreases the burden on licensees for recordkeeping and reporting requirements related to examinations, tests, and repair and replacement activities during refueling outages and the recordkeeping requirements associated with welding procedures. The annual public burden reduction for this information collection is estimated to average 59 hours for each of 172 responses. Because the burden for this information collection is insignificant, OMB clearance is not required. The existing requirements were approved by OMB, 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 listed in the RGs provide voluntary alternatives to the provisions in the ASME BPV Code and OM Code for construction, ISI, and IST 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 regulatory burden or gain additional operational flexibility. It would be difficult for the NRC to provide these advantages independent of the ASME Code case publication process without a considerable additional resource expenditure by the agency. The NRC has prepared a regulatory analysis addressing the qualitative benefits of the alternatives considered in this rulemaking and comparing the costs associated with each alternative. 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, e-mail *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 final rule will not have a significant economic impact on a substantial number of small entities. This final rule affects 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 in this rulemaking permit, but do not require, licensees to apply Code cases that have been reviewed and approved by the NRC, sometimes with modifications or conditions. Therefore, the implementation of an approved Code case is voluntary and does not constitute a backfit. Thus the Commission finds that these amendments do not involve any provisions that constitute a backfit as defined in 10 CFR 50.109(a)(1), that the backfit rule does not apply to this final rule, and that a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

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. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 50.

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

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 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, 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). Section 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 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—

■ a. Revising the introductory text of paragraph (b), the introductory text of paragraph (c)(3), paragraph (c)(3)(iv), the introductory text of paragraph (d)(2), paragraph (d)(2)(iii), the introductory text of paragraph (e)(2), paragraphs (e)(2)(iii), (f)(2), (f)(3)(iii)(A), (f)(3)(iii)(B), (f)(3)(iv)(A), (f)(3)(iv)(B), (f)(4)(i), (f)(4)(ii), (g)(2), (g)(3)(i), (g)(3)(ii), (g)(4)(i) and (g)(4)(ii);

■ b. Adding paragraphs (b)(4), (b)(5), and (b)(6); and

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

§ 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 32, ''Design, Fabrication, and Materials Code Case Acceptability, ASME Section III'' (June 2003); NRC Regulatory Guide 1.147 (Revision 0—

February 1981), including Revision 1 through Revision 13 (June 2003), ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1''; 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 which the NRC has approved in accordance with the requirements in paragraphs (b)(4), (b)(5), and (b)(6). 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. Also, copies of these Codes and NRC Regulatory Guides 1.84, Revision 32; 1.147, through Revision 13; and 1.192 are available for inspection and copying for a fee at the Office of the Federal Register, 800 N. Capitol Street, Suite 700, Washington, DC, as well as the NRC Technical Library, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852–2738. Single copies of Regulatory Guides may be obtained free of charge by writing the Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289; or by email to *DISTRIBUTION@NRC.GOV*.

* * * * *

(4) *Design, Fabrication, and Materials Code Cases.* Licensees may apply 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 an applicant or licensee initially applies a listed Code case, the applicant or licensee shall apply the most recent version of that Code case incorporated by reference in this paragraph.

(ii) If an applicant or licensee has previously applied a Code case and a later version of the Code case is incorporated by reference in this paragraph, the applicant or licensee may continue to apply the previous version of the Code case as authorized, or may apply the later version of the Code case, including any NRC-specified conditions placed on its use, until it updates its Code of Record for the component being constructed.

(iii) Application of an annulled Code case is prohibited unless an applicant or licensee applied the listed Code case prior to it being listed as annulled in Regulatory Guide 1.84. If an applicant or licensee has applied a listed Code case that is later listed as annulled in Regulatory Guide 1.84, the applicant or licensee may continue to apply the Code case until it updates its Code of Record for the component being constructed.

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

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

(ii) If a licensee has previously applied a Code case and a later version of the Code case is incorporated by reference in this paragraph, the licensee may continue to apply, to the end of the current 120-month interval, the previous version of the Code case as authorized or may apply the later version of the Code case, including any NRC-specified conditions placed on its use.

(iii) Application of an annulled Code case is prohibited unless a licensee previously applied the listed Code case prior to it being listed as annulled in Regulatory Guide 1.147. Any Code case listed as annulled in any Revision of Regulatory Guide 1.147 which a licensee has applied prior to it being listed as annulled, may continue to be applied by that licensee to the end of the 120-month interval in which the Code case was implemented.

(6) *Operation and Maintenance of Nuclear Power Plants Code Cases.* Licensees may apply the ASME Operation and Maintenance Nuclear Power Plants Code cases listed in Regulatory Guide 1.192 without prior NRC approval subject to the following:

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

(ii) If a licensee has previously applied a Code case and a later version of the Code case is incorporated by reference in this paragraph, the licensee may continue to apply, to the end of the current 120-month interval, the previous version of the Code case as authorized or may apply the later version of the Code case, including any NRC-specified conditions placed on its use.

(iii) Application of an annulled Code case is prohibited unless a licensee previously applied the listed Code case prior to it being listed as annulled in Regulatory Guide 1.192. If a licensee has applied a listed Code case that is later listed as annulled in Regulatory Guide 1.192, the licensee may continue to apply the Code case to the end of the current 120-month interval.

(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—

* * * * *

(iv) The optional Code cases applied to a component must be those listed in NRC Regulatory Guide 1.84 that is incorporated by reference in paragraph (b) 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—

* * * * *

(iii) The optional Code cases must be those listed in the NRC Regulatory Guide 1.84 that is incorporated by reference in paragraph (b) 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—

* * * * *

(iii) The optional Code cases must be those listed in NRC Regulatory Guide 1.84 that is incorporated by reference in paragraph (b) 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 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, through Revision 13, or 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, through Revision 13, or 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 that are listed in NRC Regulatory Guide 1.147, through Revision 13, 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.

(B) Pumps and valves, in facilities whose construction permit is issued on or after 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 editions and addenda of the ASME OM Code (or the optional ASME Code cases listed in NRC Regulatory Guide 1.192 that is incorporated by reference in paragraph (b) of this section) referenced in paragraph (b)(3) of this section at the time the construction permit is issued.

(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, through Revision 13, 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.

(B) Pumps and valves, in facilities whose construction permit is issued on or after November 22, 1999, which are classified as ASME Code Class 2 and 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 editions and addenda of the ASME OM Code (or the optional ASME Code cases listed in the NRC Regulatory Guide 1.192 that is incorporated by reference in paragraph (b) of this section) referenced in paragraph (b)(3) of this section at the time the construction permit is issued.

* * * * *

(4) * * *

(i) Inservice tests to verify operational readiness of pumps and valves, whose function is required for safety, conducted during the initial 120-month 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 1.192 that is incorporated by reference in paragraph (b) of this section), subject to the limitations and modifications listed in paragraph (b) of this section.

(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, through Revision 13, or 1.192 that are incorporated by reference in paragraph (b) of this section), subject to the limitations and modifications 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, through Revision 13, that are incorporated by reference in paragraph (b) of this section) in effect six 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, through Revision 13, 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, through Revision 13, 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, through Revision 13, that are incorporated by reference in paragraph (b) of this section) applied to the construction of the particular component.

* * * * *

(4) * * *

(i) Inservice examinations 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, through Revision 13, that are incorporated by reference in paragraph (b) of this section, subject to the limitations and modifications 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, through Revision 13, that are incorporated by reference in paragraph (b) of this section), subject to the limitations and modifications listed in paragraph (b) of this section.

* * * * *

Dated at Rockville, Maryland, this 10th day of June, 2003. For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 03–17027 Filed 7–7–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM246; Special Conditions No. 25–231–SC]

Special Conditions: Embraer Model 170–100 and 170–200 Airplanes; Sudden Engine Stoppage; Operation Without Normal Electrical Power; Interaction of Systems and Structures

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions; correction.

SUMMARY: This document corrects a typographical error that appeared in Final Special Conditions 25–231–SC, which were published in the **Federal Register** on April 23, 2003 (68 FR 19933). The typographical error resulted in inadvertent repetition of the following language:

In lieu of compliance with 14 CFR 25.1351(d), the following special conditions apply:

This language correctly appears in the section of the special conditions entitled Operation Without Normal Electrical Power. This same language incorrectly appears in the section entitled Interaction of Systems and Structure and should be stricken.

EFFECTIVE DATE: April 10, 2003.

FOR FURTHER INFORMATION CONTACT: Tom Groves, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1503; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: Final special conditions for Embraer Model 170–100 and 170–200 airplanes were published in the **Federal Register** on April 23, 2003 [68 FR 19933]. These special conditions pertained to sudden engine stoppage, operation without normal electrical power, and interaction of systems and structures.

As published, the final special conditions contained an inadvertent repetition of certain language on page 19935. After the section entitled Operation Without Normal Electrical Power, the language ''In lieu of compliance with 14 CFR 25.13519(d), the following special conditions apply:'' should remain. In the section entitled Interaction of Systems and Structure, that language should be stricken.

Since no other part of the final special conditions has been changed, the final special conditions are not being republished.

The effective date of the final special conditions remains April 10, 2003.

Issued in Renton, Washington on June 23, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–17112 Filed 7–7–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–25–AD; Amendment 39–13217; AD 2003–13–15]

RIN 2120–AA64

Airworthiness Directives; Schweizer Aircraft Corporation Model 269A, 269A–1, 269B, 269C, and TH–55A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Schweizer Aircraft Corporation (Schweizer) Model 269A, 269A–1, 269B, 269C, and TH–55A helicopters, that currently requires inspecting the lugs on certain aft cluster fittings and each aluminum end fitting on certain tailboom struts. Modifying or replacing each strut assembly within a specified time period and serializing certain strut assemblies are also required by the existing AD. This amendment requires the same actions as the existing AD, and also requires a one-time inspection and repair, if necessary, of certain additional cluster fittings, and replacement and modification of certain cluster fittings within 150 hours time-in-service (TIS) or 6 months, whichever occurs first. This amendment is prompted by the need to expand the applicability to include certain Hughes-manufactured cluster fittings and to provide a terminating action for the repetitive dye-penetrant inspections of the cluster fittings. The actions specified by this AD are intended to prevent failure of a tailboom support strut or a cluster fitting, which could cause rotation of a tailboom into the main rotor blades, and subsequent loss of control of the helicopter.

DATES: Effective August 12, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 12, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.