

comprised of two certified radiographers if the job site had been in Texas. Of the State personnel in attendance, one of the three individuals assisted with the petitioner's presentation, the second individual was neutral and did not indicate approval of, or opposition to the petitioner's request, and the third individual indicated that the inspection program in their State should be more aggressive. The two consultants opposed the petition. The main reasons cited by the consultants were: (1) An approved, 40-hour requirement should not be prescribed because various ways and means exist for a licensee to provide instructions to workers as required in 10 CFR 19.12; (2) a 40-hour basic radiation safety training requirement for a radiographer's assistant would be a major economic impact on a licensee due to frequent and unexpected personnel turnover; (3) the duration of basic radiation safety training need not be specified in the regulations because an individual's understanding of essential information can be readily determined during a performance-based safety inspection completed by a radiation safety officer or a regulatory agency; (4) resources would be better spent to increase the number of performance-based safety inspections at temporary job sites and enforce the current requirements than to expend resources to revise the regulations as per the petitioner's request; (5) the two person rule is necessarily prescriptive to require an additional qualified individual to observe operations during radiography because an individual radiographer working alone with an unshielded gamma radiation source of high energy and activity is unsafe even at a remote field site where the entire area is unobstructed; (6) both the radiographer and the additional qualified individual must work together and be checking on each other to ensure safety during operations; and (7) under the approach proposed by the petitioner even a certified radiographer will have problems at times because a second qualified individual is not checking against the radiographer in certain cases.

Reasons for Closure

The NRC is closing the petition because we have determined that issues and concerns raised in the petition merit further NRC consideration and inclusion in a future rulemaking. The NRC's rationale for closing the petition is based on the following points:

- The Texas program has been in place for a number of years and appears to successfully regulate industrial

radiography licensees. To date, there is no significant evidence that reveals the Texas regulations have failed to protect public health and safety. There is no apparent difference in the performance outcomes of the Texas approach or the NRC approach.

- The NRC used the previous experience from Texas and other Agreement State programs and NRC and Agreement State licensees when it developed 10 CFR part 34.

- The NRC analyzed the Agreement States' requirements equivalent to 10 CFR 34.41(a) and compared those regulations not compatible with a Compatibility Category B to the compatibility requirements for a Compatibility Category C and a Compatibility Category H & S. The NRC determined that a compatibility change to a Compatibility Category C would not resolve all the issues for the Agreement States that are non-compatible with Compatibility Category B.

- Enforcement outcomes differ between the NRC and Texas. The NRC's Enforcement Policy indicates a violation of 10 CFR 34.41(a) as an example of a Severity Level III violation that would result in escalated enforcement action. Under the Texas approach, no violation would be cited if one radiographer is observing operations in the area and the additional radiography personnel is in the dark room and aware of operations in the area.

- The Regulatory Flexibility Act (RFA) has a requirement for Federal agencies to review regulations every 10 years that affect small businesses. As an independent regulatory agency, the NRC has voluntarily complied with some RFA provisions and the NRC believes it is reasonable to review 10 CFR part 34 because it affects small businesses.

- The NRC could use an enhanced public participatory process to evaluate whether to revise 10 CFR part 34 into a more performance based regulation.

- During the time and development of the rulemaking process, NRC could continue the Integrated Materials Performance Evaluation Program reviews and if an Agreement State's regulations are found to be noncompliant for 10 CFR 34.41(a) then the finding(s) would be held in abeyance as indicated previously in the All Agreement States Letter dated March 25, 2005 (STP-05-025).

The NRC will consider the issues raised by the petition in the rulemaking process; however, the petitioner's concerns may not be addressed exactly as the petitioner has requested. During the rulemaking process the NRC will solicit comments from the public and will consider all comments before

finalizing the rule. Future actions for PRM-34-06 will be reported in NUREG-0936, "NRC Regulatory Agenda" which is publicly available on the NRC Web site at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr0936/>. The regulatory agenda is a semiannual compilation of all rules on which the NRC has recently completed action, or has proposed action, or is considering action, and of all petitions for rulemaking that the NRC is working to resolve. Further information on this petition may also be tracked through <http://www.Regulations.gov> under Docket I.D. NRC-2008-0173.

Existing NRC regulations provide the basis for reasonable assurance that the common defense and security and public health and safety are adequately protected.

For the reasons cited in this document, the NRC closes this docket PRM-34-06.

Dated at Rockville, Maryland, this 24th day of April 2008.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. E8-10819 Filed 5-13-08; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

[PRM-35-20; NRC-2006-0020]

E. Russell Ritenour, PhD; Consideration of Petition Rulemaking Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Resolution of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) will consider the issues raised in the petition for rulemaking submitted by E. Russell Ritenour, PhD, on behalf of the American Association of Physicists in Medicine (AAPM), in the rulemaking process. The petitioner requested that the NRC amend its regulations that address training requirements for experienced Radiation Safety Officers (RSOs) and Authorized Medical Physicists (AMPs). In its review and resolution of the petition, the NRC concluded that revisions made to the regulations in 2005 may have inadvertently affected a group of board certified professionals.

DATES: The docket for the petition for rulemaking PRM-35-20 is closed on May 14, 2008.

ADDRESSES: Further NRC action on the issues raised by this petition will be accessible at the federal rulemaking portal, <http://www.regulations.gov>, by searching on rulemaking docket ID: [NRC-2008-0175]. The NRC also tracks all rulemaking actions in the "NRC Regulatory Agenda: Semiannual Report (NUREG-0936)."

You can access publicly available documents related to this petition for rulemaking using the following methods:

Federal e-Rulemaking Portal: Go to <http://www.regulations.gov> and search for documents filed under the following rulemaking docket ID: [NRC-2006-0020].

NRC's Public Document Room: The public may examine and have copied for a fee publicly available documents at the NRC's Public Document Room (PDR), Public File Area, Room O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Document Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, 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 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Edward M. Lohr, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-415-0253, e-mail: Edward.Lohr@nrc.gov.

SUPPLEMENTARY INFORMATION:

The Petition

On November 1, 2006 (71 FR 64168), the NRC published a notice of receipt of a petition for rulemaking filed by E. Russell Ritenour, PhD on behalf of the AAPM. The petitioner requested that the NRC amend its regulations in 10 CFR 35.57 to recognize (1) medical physicists certified by the American Board of Radiology (ABR) or the American Board of Medical Physics (ABMP) on or before October 25, 2005, the date when former 10 CFR Part 35, Subpart J, expired, as grandfathered for the modalities that they practiced as of October 24, 2005, independent of whether or not they have been named on an NRC or Agreement State license

as of October 24, 2005; and (2) all diplomates that were certified by named boards in former 10 CFR Part 35, Subpart J, for RSOs who have relevant timely work experience even if they have not been formally named as an RSO or as either Assistant or Associate RSO. These diplomates would be grandfathered as RSOs by virtue of certification providing the appropriate preceptor statement is submitted.

Specific Issues Raised by the Petitioner

The issues asserted by the petitioner can be summarized as follows:

1. Medical physicists have demonstrated their competence to practice through certification by the ABR or the ABMP.
2. There is no evidence to support a rulemaking assertion that Training and Experience (T&E) requirements for listing as an AMP or RSO acceptable before October 25, 2005, are no longer acceptable as of October 25, 2005.
3. As a result of the present rule, individuals certified prior to the effective date will have to use the alternate pathway for recognition. AAPM believes that requiring individuals to pursue the alternate pathway for recognition on an NRC or Agreement State license places an undue burden on the medical community without an increase in public or worker health safety and potentially results in an insufficient number of AMPs and RSOs.
4. The number of AMPs and RSOs available to provide preceptor statements are limited and may result in a shortage of AMPs and RSOs.
5. The regulation, as currently written, marginalizes specialty boards.

Public Comments on the Petition

The notice of receipt of the petition for rulemaking invited interested persons to submit comments. The comment period closed on January 16, 2007. The NRC received 168 comments from professional organizations and individuals. The majority of the commenters supported approving the petition. The main reasons cited can be summarized as follows:

1. Board certifications establish credentials to qualify individuals to serve as RSOs and AMPs, regardless of when the certification was issued.
2. There is no evidence that individuals certified before October 25, 2005, are less qualified, competent or capable to perform as RSOs or AMPs. Therefore, a board certified individual should not have to use the alternate pathway to qualify as RSO or AMP.

3. The current regulations pose a burden without a corresponding increase in health and safety.

Petition Resolution

In resolving the petition, the NRC determined that the current NRC regulations may inadvertently have an effect on a group of board certified professionals insofar as they may now have to use the alternate pathway option to demonstrate that they meet the T&E requirements in Part 35 rather than the certification pathway for recognition on an NRC license as a RSO or AMP. As a result of revisions of 10 CFR Part 35 T&E requirements in 2005, the requirements that medical specialty boards had to meet in order for their certification processes to be recognized by the NRC were changed. These new requirements applied to the certification processes of new boards and those listed in former 10 CFR Part 35, Subpart J, and affected the status of certifications that had been issued by boards prior to the effective date of the new regulations. Specifically, the previously issued certifications now have to align with the new requirements in order for diplomates holding these certifications to apply for authorized status via board certification pathways.

A provision in the revised regulations "grandfathered" certain individuals. Under 10 CFR 35.57(a), only those individuals identified as an RSO, a teletherapy or medical physicist, or a nuclear pharmacist on a Commission or Agreement State license or permit before October 24, 2002, or an individual identified as a RSO, AMP, or an authorized nuclear pharmacist between October 24, 2002, and April 29, 2005, were "grandfathered;" *i.e.*, need not comply with the training requirements of 10 CFR 35.50, 35.51 or 35.55. The rationale for grandfathering these individuals was that their credentials had been reviewed and accepted during the licensing process and that they had been functioning in their positions and had established an acceptable record of performance. NRC's Advisory Committee on the Medical Use of Isotopes and other stakeholders agreed to this approach.

The petitioner identified a group of board certified professionals that may have been inadvertently affected by the 2005 revisions to the T&E requirements in 10 CFR Part 35. Specifically, certain individuals certified by boards that had been listed in NRC's former Subpart J, who had not been named on an NRC or Agreement State license or permit prior to October 25, 2005, and therefore were not grandfathered under 10 CFR 35.57, cannot use their board issued

certifications to qualify them as AMPs or RSOs. Many board certified individuals were working as medical physicists and in radiation safety positions when the T&E requirements were revised but were not named as the authorized individuals on the NRC or Agreement State licenses and, therefore, were not grandfathered under 10 CFR 35.57. These individuals, under the current regulations, may now have to use the alternate pathway option to demonstrate that they meet the T&E requirements in Part 35.

Under the current 10 CFR Part 35 requirements, two individuals, one listed on an NRC or Agreement State license or permit prior to October 25, 2005, and one who was not, with identical certifications, are treated differently. The individual listed on the license is not required to comply with the T&E requirements in Part 35 and the individual not listed must meet the T&E requirements.

In conclusion, the NRC has determined that the petitioner raised a valid concern regarding the impact of the revisions to the T&E requirements in 10 CFR Part 35. Although in the rulemaking process the NRC staff would need more data than was presented in the petition, sufficient information was presented for the NRC to conduct a review and to determine that the petitioner's concern may warrant relief for certain individuals. Therefore, in resolving the petition, the NRC concluded that the issues raised in the petition will be considered in the rulemaking process in the following way. The NRC will attempt to develop a technical basis to support a rulemaking that would address the issues raised in the petition. If a technical basis which supports rulemaking can be developed, the issues will be addressed in a future rulemaking. If a technical basis to support a rulemaking cannot be developed, the issues will not be further considered by the NRC.

Dated at Rockville, Maryland, this 30th day of April, 2008.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. E8-10736 Filed 5-13-08; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-141998-06]

RIN 1545-BG13

Withdrawal of Regulations Under Old Section 6323(b)(10); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG-141998-06) that was published in the **Federal Register** on Thursday, April 17, 2008 (73 FR 20877) relating to the validity and priority of the Federal tax lien against certain persons under section 6323 of the Internal Revenue Code.

FOR FURTHER INFORMATION CONTACT: Debra A. Kohn, (202) 622-7985 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 6323 of the Internal Revenue Code.

Need for Correction

As published, a notice of proposed rulemaking (REG-141998-06) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of a notice of proposed rulemaking (REG-141998-06), which was the subject of FR Doc. E8-8082, is corrected as follows:

1. On page 20879, column 2, under the title heading "PART 301—PROCEDURE AND ADMINISTRATION", the second entry of Paragraph 2., the language "2. Paragraphs (d)(3) *Example 1* and *Example 3* are revised." is corrected to read "2. Paragraphs (d)(3) *Example 1* and (d)(3) *Example 3* are revised."

2. On page 20879, column 2, under the title heading "PART 301—PROCEDURE AND ADMINISTRATION", the third entry of Paragraph 2., the language "3. Paragraphs (g)(1), and (g)(2) *Example 1* through *Example 3* are revised." is corrected to read "3. Paragraphs (g)(1) and (g)(2) *Example 1* through *Example 3* are revised."

3. On page 20881, column 1, the first entry of Paragraph 5., the language "1.

Paragraphs (a)(1), (a)(4), (b)(3) *Example 1*, (b)(3) *Example 5*, and (c)(1) are revised." is corrected to read "1. Paragraphs (a)(1), (a)(4), (b)(3) introductory text, (b)(3) *Example 1*, (b)(3) *Example 5*, and (c)(1) are revised."

4. On page 20881, column 1, the fourth entry of Paragraph 5., the language "4. Newly-designated paragraph (a)(3)(i) introductory text is revised." is corrected to read "4. Newly-designated paragraph (a)(3)(i) is revised."

5. On page 20881, column 1, the seventh, eighth, and ninth entries of Paragraph 5. are re-designated as eighth, ninth, and tenth entries of Paragraph 5. respectively.

6. On page 20881, column 1, the language "7. Paragraphs (c)(1) through (c)(1)(ii) are revised." is added as the newly designated seventh entry of Paragraph 5.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E8-10692 Filed 5-13-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG-2008-0027]

RIN 1625-AA01

Anchorage Regulations; Port of New York

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the boundaries of three anchorage grounds in Upper New York Bay adjacent to Ellis and Liberty Islands. This proposed action is necessary due to the proposed increase in size of the Safety and Security Zones surrounding Ellis and Liberty Islands.

DATES: Comments and related material must reach the Coast Guard on or before July 14, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG-2008-0027 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online:* <http://www.regulations.gov>.