

(iii) Evidence of a determination made in judicial or administrative proceedings, under applicable State law, that it would not be in the juvenile's best interest to be returned to the country of nationality or last habitual residence of the juvenile or of his or her parent(s).

(4) If a juvenile is in the custody of the Secretary of Health and Human Services and obtained a juvenile court order that determined or altered the custody status or placement of the juvenile, evidence that the Secretary of Health and Human Services granted specific consent.

(e) *Interview.* In accordance with 8 CFR 103.2(b) and 245.6, although an interview is not a prerequisite to the adjudication of a Special Immigrant Juvenile petition, USCIS may require an interview as a matter of discretion.

(1) The SIJ petitioner may be accompanied by a trusted adult, in addition to an attorney or representative, at the interview. USCIS, in its discretion, may place reasonable limits on the number of persons who may be present at the interview.

(2) The trusted adult or attorney or representative may present a statement at the end of the interview. USCIS, in its discretion, may limit the length of such statement or comment and may require its submission in writing.

(f) *No contact.* USCIS will not compel an SIJ petitioner to contact the alleged abuser or family members of the alleged abuser at any time during the petition or interview process.

(g) *No parental rights.* No natural or prior adoptive parent of any alien with an approved Special Immigrant Juvenile petition shall, by virtue of such parentage, be accorded any right, privilege, or status under the Act. This prohibition remains in effect even after the alien becomes a lawful permanent resident or a United States citizen.

(h) *Timeframe.* USCIS will adjudicate a petition for Special Immigrant Juvenile classification within 180 days of receipt of a properly filed petition. The date of receipt will be as provided in 8 CFR 103.2(a)(7). A request for required initial evidence from USCIS to the petitioner or a request from the petitioner for rescheduling of biometrics or an interview will restart the 180-day timeframe. Any request for additional evidence will suspend the timeframe as of the date of the request up until the date the requested evidence, response, or a request for a decision based on the evidence already provided is received. Any delay requested or caused by the applicant will not be counted as part of the 180-day adjudication period.

## PART 205—REVOCATION OF APPROVAL OF PETITIONS

3. The authority citation for part 205 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, and 1186a.

4. Section 205.1 is amended by:
- a. Removing paragraph (a)(3)(iv)(A);
  - b. Removing paragraph (a)(3)(iv)(C);
  - c. Redesignating paragraphs (a)(3)(iv)(B), (D) and (E) as paragraphs (a)(3)(iv)(A), (B) and (C) respectively; and by
  - d. Revising newly redesignated paragraph (a)(3)(iv)(B).

The revision reads as follows:

### § 205.1 Automatic revocation.

- (a) \* \* \*
- (3) \* \* \*
- (iv) \* \* \*

(B) Upon reunification of the beneficiary with one or both parents by virtue of a juvenile court order, where a juvenile court previously deemed reunification with that parent, or both parents, not viable due to abuse, neglect, or abandonment; or

\* \* \* \* \*

## PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

5. The authority citation for part 245 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1182, 1255; section 202, Public Law 105–100, 111 Stat. 2160, 2193; section 902, Public Law 105–277, 112 Stat. 2681; Title VII of Public Law 110–229; 8 CFR part 2.

6. Section 245.1 is amended by revising paragraph (e)(3) to read as follows:

### § 245.1 Eligibility.

- \* \* \* \* \*
- (e) \* \* \*

(3) *Special immigrant juveniles.* Any alien qualified for special immigrant classification under section 101(a)(27)(J) of the Act shall be deemed, for the purpose of section 245(a) of the Act, to have been paroled into the United States, regardless of the alien's actual method of entry into the United States. Neither the provisions of section 245(c)(2) of the Act nor the inadmissibility provisions of sections 212(a)(4), (5)(A), (6)(A), (6)(C), (6)(D), (7)(A), or (9)(B) of the Act shall apply to any alien qualified for special immigrant classification under section 101(a)(27)(J) of the Act. The inadmissibility provisions of sections 212(a)(2)(A), (2)(B), (2)(C) (except for a single offense of simple possession of 30 grams or less of marijuana), (3)(A),

(3)(B), (3)(C), or (3)(E) of the Act may not be waived. Any other inadmissibility provision may be waived on an individual basis for humanitarian purposes, family unity, or when it is otherwise in the public interest. The relationship between the alien and the alien's natural parents or prior adoptive parents shall not be considered a factor in a discretionary waiver determination based on family unity.

\* \* \* \* \*

**Janet Napolitano,**  
*Secretary.*

[FR Doc. 2011–22625 Filed 9–2–11; 8:45 am]

**BILLING CODE 9111–97–P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Chapter I

[NRC–2011–0209]

### NRC Enforcement Policy

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed enforcement policy revision; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or the Commission) is soliciting comments from interested parties, including public interest groups, States, members of the public, and the regulated industry (*i.e.*, reactor, fuel cycle, and materials licensees, vendors, and contractors), on several topics addressed in this document to assist the NRC in revising its Enforcement Policy. The NRC staff is currently evaluating these topics for inclusion in the next revision to the NRC Enforcement Policy. The proposed Policy topics discussed in this document will not address all the items in SRM–SECY–09–0190, “Major Revision to NRC Enforcement Policy,” dated August 27, 2010 (NRC’s Agencywide Documents Access and Management System (ADAMS) Accession No. ML102390327). Before the staff submits the next proposed Policy revision to the Commission for approval in early Calendar Year 2012, it will publish a second document in the **Federal Register** to solicit public comments on additional topics.

**DATES:** Submit comments by October 6, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Please include Docket ID NRC–2011–0209 in the subject line of

your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see "Submitting Comments and Accessing Information" in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web site:* Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2011-0209. Address questions about NRC dockets to Carol Gallagher, telephone: 301-492-3668; e-mail: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

- *Fax comments to:* RADB at 301-492-3446.

**FOR FURTHER INFORMATION CONTACT:**

Doug Starkey, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301-415-3456, e-mail: [Doug.Starkey@nrc.gov](mailto:Doug.Starkey@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Submitting Comments and Accessing Information**

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, <http://www.regulations.gov>. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this action using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

- *ADAMS:* Publicly available documents created or received at the

NRC are available online in the NRC Library 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 the 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 NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The Enforcement Policy is accessible under ADAMS Accession No. ML093480037.

- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this proposed enforcement policy revision can be found at <http://www.regulations.gov> by searching on Docket ID NRC-2011-0209.

The NRC maintains the Enforcement Policy on its Web site at <http://www.nrc.gov>; under "Spotlight," select "Enforcement Actions," and then select "Policy" under "Issued Significant Enforcement Actions."

**II. Background**

On August 27, 2010, in SRM-SECY-09-0190, the Commission approved a major revision to its Enforcement Policy. On September 30, 2010, the NRC published a notice (75 FR 60485) to announce an effective date of September 30, 2010, for that revision to the Policy. In SRM-SECY-09-0190, the Commission also directed the NRC staff to evaluate certain topics for inclusion in the next revision to the Policy. In addition to those Commission-identified topics, the staff is evaluating other topics that it may present to the Commission for approval and inclusion in the next Policy revision. The background on topics that the staff is evaluating and the corresponding proposed wording for inclusion in the next Enforcement Policy revision follows in Sections 1-5. As previously stated, the staff will, at a future date, solicit public comments on additional topics for the next proposed Policy revision.

**1. Guidance for the Use of Daily Civil Penalties**

Daily civil penalties are an enforcement action that is available to the NRC under Section 234 of the Atomic Energy Act of 1954, as amended (AEA), and Title 10 of the *Code of Federal Regulations* (10 CFR) 2.205(j). Historically, the NRC has rarely issued daily civil penalties for violations of its requirements. In certain cases, the agency did issue such penalties because it needed to send a strong regulatory

message for continuing significant violations.

The Enforcement Policy currently provides limited guidance on the use of daily civil penalties. Section 2.3.4 of the Enforcement Policy, "Civil Penalty," currently addresses the use of daily civil penalties as follows:

The NRC may exercise discretion and assess a separate violation and attendant civil penalty up to the statutory limit for each day the violation continues. The NRC may exercise this discretion when a licensee was aware of a violation, or if the licensee had a clear opportunity to identify and correct the violation but failed to do so.

In SRM-SECY-09-0190, the Commission directed the NRC staff to include additional guidance, such as criteria and examples, in the next proposed revision to the Enforcement Policy to help determine when daily civil penalties are appropriate. The intent of this proposed Policy revision is to provide factors for the staff to consider when evaluating the appropriateness of daily civil penalties for continuing violations of at least moderate significance.

The staff proposes to replace the existing paragraph in Section 2.3.4 of the current Policy with the following three paragraphs:

The NRC may exercise discretion and assess a separate violation and attendant civil penalty up to the statutory limit for each day the violation continues (*i.e.*, daily civil penalties). The NRC may exercise this discretion when a licensee was aware of a violation of at least moderate significance and had a clear opportunity to prevent, identify, and correct the violation but failed to do so.

In evaluating whether daily civil penalties are appropriate, the NRC will consider such factors as whether the violation resulted in actual consequences to public health and safety or to the common defense and security, the safety significance of the violation, whether the violation was repetitive because of inadequate corrective actions, the degree of management culpability in allowing the violation to continue or in not precluding it, the responsiveness of the licensee once the violation and its significance were identified and understood, whether the continuing violation was deliberate, and the duration of the violation. These evaluation factors are not necessarily of equal significance; therefore, for each case, the NRC will weigh the relative importance of each contributing factor, as well as any extenuating circumstances, to determine whether it is appropriate to use daily civil penalties.

When the NRC determines that the use of daily civil penalties is appropriate as part of an enforcement action, the agency will assess a base civil penalty for the first day of the violation in accordance with the civil penalty assessment process discussed in this section and Section 8.0, "Table of Base Civil

Penalties,” of the Policy. Then, to determine the total civil penalty for the continuing violation, the NRC will supplement the base civil penalty determination with a daily civil penalty for some or all the days the violation continues. The NRC will determine the amount of the daily civil penalty on a case-by-case basis after considering the factors noted in the preceding paragraph and any relevant past precedent for similar violations. The daily civil penalty may be less than the maximum statutory daily limit in effect at the time of the violation.

## 2. Credit for Fuel Cycle Licensee Corrective Action Program

All licensees, including fuel cycle licensees, are eligible to receive credit for prompt and comprehensive corrective actions taken in response to issues that warrant escalated enforcement actions (*i.e.*, Severity Level (SL) I, II, and III violations and violations associated with red, yellow, and white significance determination process findings with actual consequences) as part of the NRC’s civil penalty assessment process, as discussed in Section 2.3.4 of the Enforcement Policy. Corrective action credit under Section 2.3.4 is applicable to all licensees regardless of whether a licensee has a corrective action program (CAP). As stated in Section 2.3.4.c of the Policy, the purpose of this corrective action factor in the civil penalty assessment process is to encourage licensees (1) to take the immediate actions necessary upon discovery of a violation that will restore safety, security, and compliance with the license, regulation(s), or other requirement(s) and (2) to develop and implement (in a timely manner) the lasting actions that not only will prevent recurrence of the violation at issue but also will be appropriately comprehensive, given the significance and complexity of the violation, to prevent the occurrence of violations with similar root causes.

In response to the Commission’s direction in SRM–SECY–09–0190, the staff proposes revisions to the Enforcement Policy to provide fuel cycle licensees with credit for a CAP for certain SL IV violations. Presently, this corrective action program credit for certain SL IV violations is only available to power reactor licensees. This revision would allow fuel cycle licensees with credit for a CAP to have NRC-identified SL IV violations treated as non-cited violations (NCVs) if certain other criteria are met.

Section 2.3.2, “Non-Cited Violation,” of the current Enforcement Policy provides criteria that all NRC licensees must meet before the agency can disposition a SL IV violation as a NCV.

These criteria, in part, state the following:

- The violation was corrected or committed to be corrected within a reasonable period of time (commensurate with the significance of the violation).
- The violation was not repetitive as a result of inadequate corrective action. (This does not apply to violations associated with green Reactor Oversight Process findings).
- The violation was not willful. Notwithstanding willfulness, a NCV may still be appropriate in certain specified circumstances.

In addition to the above criteria, Section 2.3.2.a., “Power Reactor Licensees,” of the Enforcement Policy provides credit to power reactor licensees for their CAP, allowing the agency to disposition either NRC-inspector-identified or licensee-identified SL IV violations as NCVs if the violations are entered into a CAP. The current Policy does not allow the agency to disposition NRC-inspector-identified SL IV violations at fuel cycle licensees as NCVs. To disposition a SL IV violation as a NCV at any NRC licensee other than a power reactor licensee, Section 2.3.2.b., “All Other Licensees,” of the Enforcement Policy requires, in addition to the criteria stated above, the licensee to have already identified the violation.

The staff proposes the following changes to the Enforcement Policy to provide fuel cycle licensees credit for a CAP. (Note that until the NRC develops inspection procedures establishing criteria that a fuel cycle licensee must meet for approval of its CAP and until the NRC completes inspections to ensure that a fuel cycle licensee’s CAP is acceptable, criteria for the disposition of SL IV violations as NCVs at fuel cycle licensees will remain as stated in Section 2.3.2.b. of this Policy.)

- Revise the title of Section 2.3.2.a. from “Power Reactor Licensees” to “Licensees or Applicants with an Approved Corrective Actions Program.”
- Insert a footnote in Section 2.3.2.a that states, “NRC approval of a licensee’s corrective action program will be determined based on the results of applicable NRC inspections.”
- Revise the title of Section 2.3.2.b. from “All Other Licensees” to “All Other Licensees or Applicants.”

## 3. Civil Penalties to Individuals Who Disclose Safeguards Information

The current Enforcement Policy provides limited guidance on the topic of civil penalties to individuals who release Safeguards Information (SGI). Therefore, the NRC staff is proposing

additional Policy guidance for use in determining when the agency should issue civil penalties to individuals who release SGI. This additional guidance, if approved by the Commission, would provide the guidance as an assessment tool for the staff. The NRC will determine the appropriateness of civil penalties on a case-by-case basis, depending on the circumstances and significance associated with each case.

The staff is proposing a base civil penalty of \$3,500 for individuals who release SGI. The addition of a new category in Table A of Section 8.0, “Table of Base Civil Penalties,” of the Enforcement Policy will reflect this base civil penalty. Table B will apply when the NRC must determine a civil penalty associated with SL I, II, and III violations.

Currently, Section 4.3, “Civil Penalties to Individuals,” of the Policy addresses the use of civil penalties to individuals as follows:

Except for individuals subject to civil penalties under Section 206 of the ERA [Energy Reorganization Act], as amended, the NRC will not normally impose a civil penalty against an individual. However, Section 234 of the AEA gives the Commission authority to impose civil penalties on “any person.” Furthermore, any person, whether or not a licensee of the Commission, who violates any regulations adopted under Section 147, “Safeguards Information,” of the AEA will be subject to the full range of enforcement sanctions, including civil penalties. Section 11s of the AEA broadly defines “person” to include individuals, a variety of organizations, and their representatives or agents.

The staff proposes to add a new section to the Enforcement Policy (*i.e.*, Section 4.3.1, “Individual Civil Penalty for Release of Safeguards Information Violations”) to provide the guidance necessary to determine civil penalties for SGI violations. The proposed Section 4.3.1 would read as follows:

### 4.3.1 Individual Civil Penalty for Release of Safeguards Information Violations

Civil penalty considerations for violations by individuals who release SGI and who are not employed by an NRC licensee or contractor differ from those for licensees and contractors who release SGI. The NRC will typically not (with the possible exception of a deliberate release of SGI) issue civil penalties to individuals for violations of SGI requirements if that individual’s employer (a licensee or contractor) placed the violation in its corrective action program and has taken, or plans to take, corrective actions to restore compliance.

Table A in Section 8.0 of this Policy lists the base civil penalty for individuals who release SGI. The intent of civil penalties to individuals is to serve as a deterrent; these penalties generally do not require a base civil penalty as high as that issued to a licensee

or contractor. However, willful violations may support a civil penalty outside of the range listed in Section 8.0. Additionally, the NRC should consider an individual's reasons for disclosing SGI (e.g., economic gain or expression of views) and the willingness of the individual to correct or mitigate the release of information in determining the final civil penalty amount.

Section 6.13, "Information Security," of this Policy provides examples of violations to help determine the severity levels of violations. Also, in determining the appropriate severity level for the release of SGI, the NRC will consider the type of SGI information disclosed, its availability to the public, the damage or vulnerability that the information caused or may cause to the licensee that possessed ownership of the SGI, and the damage that the information caused or could cause to public health and safety. The NRC will also use SGI-related significance determination process (under the Reactor Oversight Process) information, when available, to inform the severity level determination.

#### 4. Export/Import of Regulated Material-Violation Examples

Section 2.2.5, "Export and Import of NRC-Regulated Radioactive Material and Equipment," of the Enforcement Policy currently addresses the use of enforcement for violations of the agency's export and import requirements in 10 CFR part 110, "Export and Import of Nuclear Equipment and Material."

The staff proposes a minor revision to the title of Section 2.2.5 for consistency with the current title of 10 CFR part 110, as follows: "Export and Import of Nuclear Equipment and Material." In addition, the staff will also insert a reference correction in the last sentence, thus replacing the regulation reference in the last parenthetical statement of this paragraph, as follows:

##### 2.2.5 Export and Import of Nuclear Equipment and Material

The NRC will normally take enforcement action for violations of the agency's export and import requirements in 10 CFR part 110, "Export and Import of Nuclear Equipment and Material," for radioactive material and equipment within the scope of the agency's export and import licensing authority (10 CFR 110.8, 10 CFR 110.9, and 10 CFR 110.9a) for (1) Completeness and accuracy of information, (2) reporting and recordkeeping requirements (10 CFR 110.23, 10 CFR 110.26, 10 CFR 110.50, and 10 CFR 110.54), and (3) adherence to general and specific licensing requirements (10 CFR 110.20–27 and 10 CFR 110.50).

Also, the current Policy does not contain violation examples for export and import activities that depict likely SLs that the staff can use to assess the relative significance of various violations of 10 CFR part 110. As a result, the staff proposes the following

change to incorporate a new section (Section 6.15, "Export and Import Activities") in the Enforcement Policy to provide example violations and proposed SLs for export and import activities:

##### 6.15 Export and Import Activities

Several of the following violation examples involve deliberateness or careless disregard. For those examples, the normal Enforcement Policy process for discretion to potentially escalate the severity level of the violation based on willfulness is not necessary.

a. Severity Level I violations involve, for example:

1. Deliberate misrepresentation of facts, with the knowledge of a licensee official, that led to the export of licensable and sensitive equipment or material in quantities of concern to a destination that, if represented accurately, would not have been authorized by the NRC (or other authority); or

2. Deliberate misrepresentation of facts that led to unauthorized individuals obtaining sensitive nuclear equipment or materials in quantities of concern;

b. Severity Level II violations involve, for example:

1. Failure to provide notice of 10 CFR part 110, Appendix P, material import as required by 10 CFR 110.50, which, if the notice had been provided, would have prompted the NRC to take action to block the import;

2. Misrepresentation of facts in careless disregard of requirements, with the knowledge of a licensee official, for the export or import of radioactive or byproduct materials, such as those involving the completeness or accuracy of the information that, if represented accurately, would not have been authorized by the NRC (or other authority); or

3. Inaccurate or incomplete information provided or maintained that led to unauthorized individuals possessing radioactive materials

c. Severity Level III violations involve, for example:

1. Failure to submit timely notification of the import of 10 CFR part 110, Appendix P, material, as required by 10 CFR 110.50;

2. Inaccurate or incomplete information on exports or imports of radioactive or byproduct materials such that, if the information had been represented accurately, an activity would not have been authorized by the NRC (or other authority) or would have resulted in the NRC reconsidering the authorization of the activity, issuing a request for additional information (RAI), or conducting an inspection to resolve the matter;

3. Export of byproduct material in quantities of concern to individuals/entities not authorized to receive such materials; or

4. Failure to obtain a specific license before the export or import of any NRC licensable equipment, special nuclear material, and source or byproduct materials, when required.

d. Severity Level IV violations involve, for example:

1. Failure to submit timely reports as specified in 10 CFR 110.54;

2. Export or import of nuclear equipment or materials in excess of the limits specified

in a specific license or license amendment, when such activity would have been authorized by the NRC (or other authority);

3. Export of byproduct material exceeding the possession limits authorized for the ultimate consignee, not involving a Severity Level I, II, or III violation;

4. Unauthorized export of foreign-obligated material in violation of 10 CFR 110.50(b)(3), not involving a Severity Level I, II, or III violation; or

5. Failure to obtain a specific license to export or import NRC licensable equipment, special nuclear material, and source or byproduct materials that are not authorized by the general licenses in 10 CFR 110.21 through 110.27 and not involving a Severity Level I, II, or III violation.

#### 5. Civil Penalties for Loss of Control of Regulated Material

On December 18, 2000 (65 FR 79139), the NRC published a notice amending NUREG-1600, "General Statement of Policy and Procedure for NRC Enforcement Actions" (the Enforcement Policy), to establish separate base civil penalty amounts for loss, abandonment, or improper transfer or disposal of sealed sources and devices containing NRC-licensed material. The intent was to better relate the civil penalty amount to the costs avoided by the failure to properly dispose of the source or device.

At that time, the Commission determined that normally a civil penalty of at least the base civil penalty amount was appropriate for these types of violations to provide deterrence and an economic incentive for licensees to expend the necessary resources to ensure compliance. Such a deterrent measure would also result in an enforcement action that properly reflected the safety and security significance of the loss of control of such material.

The normal civil penalty assessment process assigns varying civil penalty amounts based on, for example, a licensee's past enforcement history, whether the licensee self-identified the violation, and whether the licensee took prompt and comprehensive corrective action. However, the lost source policy, described in Section 2.3.4 of the Enforcement Policy, stipulates that the NRC will normally assign a civil penalty of at least the base amount for violations involving the loss, abandonment, or improper transfer or disposal of radioactive source material, regardless of the outcome of the normal civil penalty assessment process. Therefore, the factors that may result in the mitigation or escalation of a civil penalty for other violations (i.e., past enforcement history, identification, and corrective action) have not typically been considerations for these types of violations.

Section 2.3.4 of the Enforcement Policy currently addresses the civil penalties associated with loss of regulated material as follows:

The NRC considers civil penalties for violations associated with loss of regulated material (*i.e.*, the NRC's lost source policy). Loss of NRC-regulated material is a significant regulatory and security concern because of potential unauthorized possession, use, or overexposure to members of the public. Violations where regulated radioactive material remains out of the required control of a licensee for any period of time are dispositioned separately, regardless of the use, license type, quantity, or type of radioactive material (see Table of Base Civil Penalties, Tables A and B, in Section 8.0 of this Policy). Such violations may include, but are not limited to, for example, the loss, abandonment, improper transfer, or disposal of a device, source, or other form of regulated material. Notwithstanding the normal civil penalty assessment process, in cases where a licensee has lost required control of its regulated radioactive material for any period of time, the NRC normally will impose at least a base civil penalty. However, the Agency may mitigate or escalate a civil penalty amount based on the merits of a specific case. When appropriate, the NRC may consider, for example, information concerning the estimated or actual cost of authorized disposal and/or the actual consequences of the material remaining out of the control of the licensee.

In accordance with Section 2.3.4 of the current Enforcement Policy, the NRC may mitigate or escalate the amount of a civil penalty based on the merits of a specific case. Therefore, even under the current Enforcement Policy, the NRC may consider information concerning the estimated or actual cost of authorized disposal and the actual consequences of the loss, abandonment, or improper transfer or disposal of the regulated material for cases subject to the lost source policy. Additionally, even though Section 2.3.4 of the Enforcement Policy permits the NRC to consider the merits of a specific case when determining a civil penalty amount, this flexibility has not typically been exercised for lost source violations. As a result, most violations involving lost sources that have met the threshold for escalated enforcement have resulted in civil penalties of at least the base amount. Tables A and B in Section 8.0 of the Enforcement Policy show the current base civil penalties for violations involving the loss, abandonment, or improper transfer or disposal of a sealed source or device.

In response to the Commission's direction in SRM-SECY-09-190, the staff is proposing a revision to the Enforcement Policy to remove language stating that the NRC will assess at least

a base civil penalty for violations involving loss of control of radioactive materials. The intent is to maintain the existing lost source policy to issue at least a civil penalty while giving the staff the flexibility to disposition those cases where a licensee has lost NRC regulated material, but took immediate action to recover it, in a timely manner, with little or no risk to the public while the material was not in the licensee's control. In such cases where loss of control is the issue, rather than actual lost material, the normal civil penalty assessment process, described in Section 2.3.4, would be used rather than typically issuing at least a base civil penalty as required by the current lost source policy. The staff will revise Section 2.3.4 to indicate that, notwithstanding the normal civil penalty assessment process, the NRC may exercise discretion and impose a civil penalty in cases in which a licensee has lost required control of its regulated radioactive material. As a result, the staff will revise Section 7.0, "Glossary," of the Enforcement Policy to reflect the proposed changes in the definition of "lost source policy" and will revise Note 3 in Table A of Section 8.0. The current definition of "lost source policy" in Section 7.0 of the Enforcement Policy states the following:

*Lost Source Policy* is the policy of the NRC in which a civil penalty of at least the base civil penalty amount is normally issued in a case where regulated material is out of the control of the licensee for any period of time, regardless of the use, licensee type, quantity, or type of radioactive material (examples include loss, abandonment, improper transfer, or improper disposal of regulated material). Violations associated with loss of control of regulated material normally result in escalated enforcement actions.

Note 3 in Table A of Section 8.0 currently states the following:

These base civil penalty amounts have been determined to be approximately 3 times the average cost of disposal. For specific cases, the NRC may adjust these amounts to correspond to 3 times the actual cost of authorized disposal.

The staff proposes to replace the previously stated paragraph in Section 2.3.4 of the Policy with the following paragraph:

The NRC considers civil penalties for violations associated with loss of regulated material (*i.e.*, the NRC's lost source policy). The loss of NRC-regulated material is a significant regulatory and security concern because of the potential unauthorized possession or use of the material and because of the potential for overexposure to members of the public from its misuse. Such violations may include but are not limited to, for example, the loss, abandonment, improper transfer, or improper disposal of a device,

source, or other form of regulated material. Notwithstanding the normal civil penalty assessment process, in cases where a licensee has lost required control of its regulated radioactive material, the NRC may exercise discretion and impose a civil penalty. However, the agency may mitigate or escalate a civil penalty amount based on the merits of a specific case. When appropriate, the NRC may consider, for example, information on the estimated or actual cost of authorized disposal and the actual consequences of the material remaining out of the control of the licensee, radiation workers, or the environment. Normally, the NRC will not apply the lost source policy to generally licensed devices that are not required to be registered in accordance with 10 CFR 31.5(c)(13)(i). The NRC will continue to apply the normal Enforcement Policy in those cases that require the application of a civil penalty.

As a result of this proposed change in Section 2.3.4, the staff proposes the following change to the definition of "lost source policy" in Section 7.0:

*Lost Source Policy* is the policy of the NRC in which a civil penalty may be issued for violations resulting in regulated source material being out of the control of the licensee regardless of the use, license type, quantity, or type of regulated material (*e.g.*, loss, abandonment, improper transfer, or improper disposal of regulated material).

The staff proposes the following change to Note 3 in Table A of Section 8.0:

These base civil penalty amounts have been determined to be approximately 3 times the average cost of disposal. For specific cases, the NRC may adjust these amounts to correspond to the estimated or actual cost of authorized disposal for the particular material in question.

In addition, the staff will revise the Enforcement Manual to clarify circumstances that may warrant mitigation (or escalation) of the base civil penalty amount for violations involving the loss of radioactive material. Further, the staff will add language to indicate that the NRC should consider escalating the civil penalty above the base amount for cases involving willfulness or that resulted in actual safety consequences or both.

### III. Procedural Requirements

#### *Paperwork Reduction Act*

This proposed policy statement does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0136.

#### *Public Protection Notification*

The NRC may not conduct or sponsor, and a person is not required to respond

to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

#### *Congressional Review Act*

In accordance with the Congressional Review Act (5 U.S.C. 801–808), 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.

For the Nuclear Regulatory Commission.

Dated at Rockville, MD, this 29th day of August 2011.

**Roy P. Zimmerman,**

*Director, Office of Enforcement.*

[FR Doc. 2011–22646 Filed 9–2–11; 8:45 am]

**BILLING CODE 7590–01–P**

## **NATIONAL CREDIT UNION ADMINISTRATION**

### **12 CFR Part 704**

**RIN 3133–AD95**

#### **Corporate Credit Unions**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** NCUA is issuing proposed amendments to its rule governing corporate credit unions (corporates). The proposed amendments clarify certain provisions and make some technical corrections to the rule. The amendments: delete the definition of “daily average net risk-weighted assets,” revise the definition of “net assets” to exclude Central Liquidity Facility (CLF) stock subscriptions, clarify certain requirements regarding investment action plans, clarify the weighted average life (WAL) tests, revise the consequences of WAL violations, substitute the term “core capital” for the phrase “the sum of retained earnings and paid-in capital,” correct a section heading, and correct a model form instruction.

**DATES:** Comments must be received by October 6, 2011. The NCUA Board does not expect significant comment on these amendments and so is issuing the proposal with a 30-day comment period.

**ADDRESSES:** You may submit comments by any of the following methods (Please send comments by one method only):

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*NCUA Web site:* <http://www.ncua.gov/Resources/RegulationsOpinionsLaws/ProposedRegulations.aspx>. Follow the instructions for submitting comments.

*E-mail:* Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name] Comments on ‘Proposed Rule—Corporate Credit Unions’” in the e-mail subject line.

*Fax:* (703) 518–6319. Use the subject line described above for e-mail.

*Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

*Hand Delivery/Courier:* Same as mail address.

*Public Inspection:* All public comments are available on the agency’s Web site at <http://www.ncua.gov/Resources/RegulationsOpinionsLaws/ProposedRegulations.aspx> as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA’s law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

**FOR FURTHER INFORMATION CONTACT:** Lisa Henderson, Staff Attorney, Office of General Counsel, at the address above or telephone (703) 518–6540; or David Shetler, Deputy Director, Office of Corporate Credit Unions, at the address above or telephone (703) 518–6640.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background and Proposed Amendments**

In 2010, NCUA published a final rule containing extensive revisions to its corporate rule at 12 CFR part 704. 75 FR 64786 (October 20, 2010). NCUA subsequently issued technical corrections to the final rule and further revisions to part 704. 76 FR 16235 (March 23, 2011); 76 FR 23861 (April 29, 2011). In order to clarify certain provisions and relieve regulatory burden, the NCUA Board is proposing additional changes to part 704. The proposed changes are explained below.

##### *§ 704.2 Definition of “daily average net risk-weighted assets”*

Prior to the 2010 final rule, the NCUA Board issued a proposed rule to revise part 704 in 2009. 74 FR 65210 (December 9, 2009). The 2009 proposal defined the denominator of two new risk based capital ratios as moving

“daily average net risk-weighted assets” (DANRA). Some commenters on the proposal questioned the burden of daily risk weighting to produce the moving DANRA figure. The Board agreed that a daily calculation was not necessary and in the final rule replaced the denominator for both new ratios with a new “moving monthly average net risk weighted assets” (MMANRA). 75 FR at 64796. The term “DANRA” is not used in part 704, and its inclusion in § 704.2 was an oversight. This proposal removes the DANRA definition from § 704.2.

##### *Section 704.2 Definition of “net assets”*

Section 704.2 defines “net assets,” in relevant part, as “total assets less loans guaranteed by the NCUSIF and member reverse repurchase transactions.” The Board is proposing to amend the definition to also exclude CLF stock subscriptions. The Board believes the credit risk of carrying this asset is negligible and warrants such treatment, as CLF stock is putable at par. Further, the Board strongly believes that all natural person credit unions should have access to a back-up liquidity provider that can meet their liquidity demands in the event of a wide-spread market disruption. The CLF can supply this liquidity if its borrowing authority is not diminished by a reduction of its stock subscriptions. This proposed change should encourage continued CLF participation by corporates, which in turn will facilitate corporates providing a systemic liquidity benefit to natural person credit unions through offering CLF access as agents.

##### *Section 704.6 Requirements for Investment Action Plans*

Section 704.10 sets out consequences, potentially including the preparation of a written investment action plan, for possessing an investment that fails to meet a requirement of part 704. 12 CFR 704.10. Sections 704.6(c)(3) and (f)(4) trigger these consequences for violations of certain concentration limits and credit rating requirements. 12 CFR § 704.6(c)(3) and (f)(4). To clarify the applicability of these triggering provisions, the Board proposes to move them to a new paragraph at § 704.6(h). Under proposed § 704.6(h), an investment will be subject to the requirements of § 704.10 if it violates any of the concentration limits or credit rating requirements of § 704.6.

The Board notes that § 704.6(f)(4)(i) provides that an investment is subject to the requirements of § 704.10 if its credit rating is downgraded, after purchase, “below the minimum rating requirements of this part.” 12 CFR