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Note to: David Meyer
From: Kathryn Winsberg
Subject: Regulatory Issue

STATEMENT OF PROBLEM

It has come to our attention, partially through a public comment on the current Part 70 rulemaking, that our regulations contain incomplete and inconsistent references to section 202 of the Energy Reorganization Act of 1974. Effective October 17, 1998, section 3134 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999¹ amended section 202 of the Energy Reorganization Act of 1974 as follows:

SEC. 3134. LICENSING OF CERTAIN MIXED OXIDE FUEL FABRICATION AND IRRADIATION FACILITIES.

(a) License Requirement.--Section 202 of the Energy Reorganization Act of 1974 (42 U.S.C. 5842) is amended by adding at the end the following new paragraph:

“(5) Any facility under a contract with and for the account of the Department of Energy that is utilized for the express purpose of fabricating mixed plutonium-uranium oxide nuclear reactor fuel for use in a commercial nuclear reactor licensed under such Act, other than any such facility that is utilized for research, development, demonstration, testing, or analysis purposes.”.

However, there are multiple references to Section 202 in NRC regulations in Chapter 1 of Title 10 of the Code of Federal Regulations. Some of these references merely cite Section 202, while others contain a description of the text of Section 202, and these latter sections are now incomplete. Because it is possible that there will be more additions to Section 202 and because the existing references are inconsistent about citing the text of Section 202, to avoid the necessity of repeatedly amending numerous regulations, it would seem desirable to change all the references to merely cite Section 202, rather than detail the text of Section 202.

REFERENCES TO SECTION 202 OF THE ENERGY REORGANIZATION ACT

I. The following subsections reference Section 202 and include a restatement of the text which is now incomplete (however for some reason §§ 50.2 and 50.11 only contain two of the four paragraphs that existed prior to the recent addition of the paragraph concerning MOX):

- § 2.4 Definition of “person” and footnote 4
- § 30.4 Definition of “person” and footnote 1

¹Pub.L. 105-261, Div. C, Title XXXI, § 3134(a), Oct. 17, 1998, 112 Stat. 2247.

- § 40.4 Definition of "person" and footnote 1
- § 50.2 Definition of "person" and footnote 1 (only 2 of 4 paragraphs)
- § 50.11 (b) and footnote 2 (only 2 of 4 paragraphs)
- § 70.4 Definition of "person" and footnote 9
- § 70.11 text and footnote 10

II. For comparison, the following subsections reference Section 202 of the Energy Reorganization Act without elaborating on the content of that section:

- § 20.1003 Definition of "person" paragraph 1
- § 25.5 Definition of "person"
- § 30.12 2 references in text
- § 40.11 2 references in text
- § 55.1 (a)
- § 72.3 Definition of "person" paragraph 1
- § 73.2 Definition of "person"
- § 74.4 Definition of "person" paragraph 1
- § 76.4 Definition of "person" paragraph 1
- § 95.5 Definition of "person"
- § 140.3 Definition of "person"