



AUG 25 2008

NEF-08-00213-DOC

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Louisiana Energy Services, LLC
National Enrichment Facility
NRC Docket No. 70-3103

Subject: Proposed Rule: Additional Protocol Regulations (73 FR 43568)

On July 25, 2008, the Department of Commerce (DOC) published a proposed rule that would create Parts 781 through 786, 73 Fed. Reg. 43568 (Proposed Rule). The preamble to the Proposed Rule states, in pertinent part, that:

This proposed rule would implement the provisions of the Protocol Additional to the Agreement Between the United States of America (U.S.) and the International Atomic Energy Agency (IAEA) for the Application of Safeguards in the United States of America (the "Additional Protocol")....[T]he Department of Commerce's Bureau of Industry and Security (BIS) is proposing these Additional Protocol Regulations (APR) to implement the provisions of the Additional Protocol affecting U.S. industry and other U.S. persons engaged in certain civil nuclear fuel cycle related activities, which are not regulated by the U.S. Nuclear Regulatory Commission (NRC) or its domestic Agreement States and are not located on certain U.S. government locations.

Although the Proposed Rule specifically addresses non-NRC licensees, our discussions with representatives of the DOC and the NRC indicated that NRC licensees should present any comments they may have through the DOC's rule making process, especially given the joint information collection efforts by the DOC and NRC.

LES is an enrichment operations company located in Eunice, New Mexico which is wholly owned by Urenco. Urenco is an enrichment operations company with three facilities located in Great Britain, Germany and the Netherlands, and has been conducting enrichment activities in Europe for over 30 years. Urenco, in conjunction with the German, Dutch, British Governments and Euratom, have worked closely with the IAEA to develop an inspection and reporting protocol for their three European-based enrichment operations facilities.

The enrichment equipment employed at the LES facility in New Mexico is being provided by Enrichment Technologies United States (ET US), a wholly owned subsidiary of Enrichment Technologies Company (ETC). ETC is a European based company partially owned by Urenco. Under the Treaty of Washington (Exhibit 1), Urenco was allowed to build an enrichment facility in the United States.

Urenco and ETC working with the IAEA and the Tripartite Governments (United Kingdom, Germany and the Netherlands) developed the Additional Protocol¹ which governs Urenco declarations and complementary access to Urenco sites. A summary paper addressing the Additional Protocol is included as Exhibit 2 and it describes the Urenco/ETC declarations for and the complementary access to the Urenco/ETC sites in the non-weapon states of Germany and the Netherlands. IAEA's agreement to abide by the terms and conditions of the Additional Protocol at the Urenco sites is memorialized in a letter to each of the Tripartite Governments (*see e.g.*, IAEA letter to the British Government, included as Exhibit 3).

LES' comments are based on Urenco's experience with the IAEA in Europe and on what will be necessary to ensure that Urenco's and LES' enrichment operations in the United States are not jeopardized in terms of disclosing proliferation-sensitive information or trade secrets.

¹ The IAEA, Tripartite Governments, and Urenco Additional Protocols used in Europe will be provided upon request from either the DOC or the NRC.

Comment No. 1 – Reporting requirement to disclose enrichment equipment on a component by component basis would result in the disclosure of sensitive information

The Proposed Rule, at 73 Fed. Reg. p. 43568, states in pertinent part that:

Section 783.1 (c) Export Report. [Reporting entity] must complete Forms AP-1, AP-2, and AP-13 for each export of specified equipment or non-nuclear material identified in Supplement No. 3 to this Part.....

Section 783.1 (d) Import Confirmation Report. [Reporting entity] must complete Forms AP-1, AP-2, and AP-14 for each import of equipment or non-nuclear material identified in Supplement No. 3 to this Part

LES Comment:

The Proposed Rule requires certain reports be generated detailing the types of enrichment equipment imported or exported. Supplement No. 3 of Part 783, specifically Subsection 5, explicitly lists components as identified on the Zangger Trigger List. Given this, LES is concerned that the reports will require internal components of the enrichment equipment to be disclosed.

This detailed level of disclosure would result in the release of proliferation-sensitive information. Furthermore, this level of disclosure is inconsistent with the Additional Protocol executed among Urenco, ETC and IAEA. Specifically, under that Additional Protocol, IAEA has agreed not to require reporting on a component by component basis, but rather only on a set of equipment (centrifuge equivalent).² The purpose of this reporting approach is to prevent revealing of any classified or otherwise commercially sensitive information.

² The terminology “centrifuge equivalent” is defined in the attached summary document as the number of “sets of the component” where one set is sufficient for one centrifuge.

Comment No. 2 A clear standard is needed for determining what is confidential business and other critical information, and the facility operator should make this determination consistent with IAEA protocols in Europe

The Proposed Rule, at 73 Fed. Reg. pages 43571-43572 and 43591-43595, states in pertinent part that:

Part 784--Complementary Access

LES Comment:

The Proposed Rule does not clearly indicate who will actually determine what constitutes confidential business and other critical information. A very clear standard established prior to any complementary access is necessary in order to ensure that the appropriate classification of information can be made. In turn, such clarity will thereby eliminate any potential confusion or inadvertent release of confidential business and other critical information.

In addition, because the Proposed Rule does not indicate who will determine what is confidential business and other critical information, the facility operator should make this determination in the first instance because it is in the best position to know what information is proprietary and, if such information were released, what commercial damage could result. Consequently, the Proposed Rule should be revised to provide the operator (*e.g.*, LES) the opportunity to establish what constitutes confidential business and other critical information.

Such an approach would be consistent with how IAEA works with the Urenco sites in Europe. As shown in the summary of the Additional Protocol (Exhibit 2), IAEA inspectors can take notes while inspecting the facility; however, the notes are shown to the operator (Urenco) before the inspector leaves the site to ensure the protection of commercial, technological and industrial secrets as well as other confidential information. In Europe, the IAEA has left it to the operator to determine what is confidential business and other critical information.

Comment No. 3 The Proposed Rule defines Managed Access but provides no further guidance which would result in the release of commercially sensitive information

The Proposed Rule, at 73 Fed. Reg. p. 43568, states in pertinent part that:

Section 781.1 Definitions of terms used in the Additional Protocol Regulations (APR).

Managed access. Procedures implemented by the Host Team during complementary access to prevent the dissemination of proliferation

sensitive information, to meet safety or physical protection requirements, to protect proprietary or commercially sensitive information, or to protect activities of direct national security significance to the United States, including information associated with such activities, in accordance with the Additional Protocol.

LES Comment:

Although the Proposed Rule defines the term Managed Access, it does not provide any provisions within the document as to how this activity will be implemented. Without a clear protocol, the potential for inadvertent release of commercially sensitive information is increased.

LES believes the process currently utilized in working with the IAEA in Europe should be adopted. As discussed in more detail within the summary paper addressing the Additional Protocol (Exhibit 2), buildings or sub-sections of buildings that are known to require managed access at all times are indicated in site declarations and the associated site plans. However, localized managed access measures, (*e.g.* shrouding of equipment and protection of sensitive information in documents or on computer screens), are likely to be necessary at other buildings on site which contain sensitive equipment. The nature of the measures requiring such protection and the precise locations where this protection will be applied may vary by situation and thus cannot be predicted in advance. Upon receipt of a request for complementary access, Urenco assesses what measures are necessary. The measures applied will be those necessary to ensure that sensitive information/equipment is protected at the time of access. However, such arrangements shall not preclude the IAEA from conducting activities necessary to provide credible assurance of the absence of undeclared nuclear material and activities.

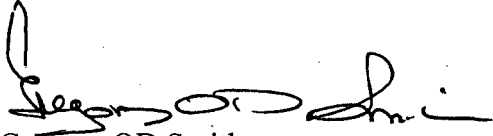
In summary, LES has the following comments:

- The Proposed Rule reporting requirement to disclose enrichment equipment on a component by component bases would result in the disclosure of sensitive information.
- A clear standard is needed for determining what is confidential business and other critical information, and the facility operator should make this determination consistent with IAEA protocols in Europe
- The Proposed Rule defines Managed Access but provides no further guidance which would result in the release of commercially sensitive information.

LES believes that adoption of its comments on the Proposed Rule will ensure that proliferation-sensitive information or trade secrets are not inappropriately disclosed and that the protocols implemented at the Urenco facilities in Europe and the United States are consistent.

If you have any questions, please contact Mr. Stephen Cowne, Quality and Regulatory Affairs Director at 505-394-4646.

Respectfully,



Gregory OD Smith
Chief Operating Officer and Chief Nuclear Officer

Enclosures: 1) Exhibit 1 – Treaty of Washington
2) Exhibit 2 – Urenco Summary of Additional Protocol
3) Exhibit 3 – IAEA Letter to British Department of Trade and Industry

cc: Tim Johnson, NRC Project Manager

Region II
U.S. Nuclear Regulatory Commission

Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission