

## § 1047.5

federal offenses; LLEA officers for state or local offenses) unless:

(1) The protective force officer can make a citizen's arrest for the criminal offense under the law of the state,

(2) The protective force officer is an authorized state peace officer or otherwise deputized by the particular state to make arrests for state criminal offenses, or

(3) The protective force officer has been deputized by the U.S. Marshals Service or other federal law enforcement agency to make arrests for the criminal offense.

(e) In those locations which are within the "special maritime and territorial jurisdiction of the United States," as defined in 18 U.S.C. 7, the Assimilative Crimes Act (18 U.S.C. 13) adopts the law of the state for any crime under state law not specifically prohibited by Federal statute and provides for federal enforcement of that state law. The local DOE Office of Chief Counsel, in coordination with contractor legal counsel, as appropriate, shall provide guidance in this matter.

### **§ 1047.5 Exercise of arrest authority—general guidelines.**

(a) In making an arrest, the protective force officer should announce his or her authority (e.g., "Security Officer") and that the person is under arrest prior to taking the person into custody. If the circumstances are such that making such announcements would be useless or dangerous to the officer or others, the protective force officer may dispense with these announcements.

(b) The protective force officer at the time and place of arrest may search any arrested person for weapons and criminal evidence and the area into which the arrested person might reach for a weapon or to destroy evidence. Guidance on the proper conduct and limitations in scope of search and seizure of evidence shall be obtained from the local DOE Office of Chief Counsel, in coordination with contractor legal counsel, as appropriate.

(c) After the arrest is effected, the arrested person shall be advised of his or her constitutional right against self-incrimination (Miranda warnings). If the circumstances are such that making

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such advisement is dangerous to the officer or others, this requirement may be postponed until the immediate danger has passed.

(d) Custody of the person arrested should be transferred to other federal law enforcement personnel (i.e., U.S. Marshals or FBI agents) or to LLEA personnel, as appropriate, as soon as practicable. The arrested person should not be questioned or required to sign written statements unless:

(1) Questioning is necessary for security or safety reasons (e.g., questioning to locate a bomb), or

(2) Questioning is authorized by other federal law enforcement personnel or LLEA officers responsible for investigating the crime.

### **§ 1047.6 Use of physical force when making an arrest.**

(a) When a protective force officer has the right to make an arrest as discussed above, the protective force officer may use only that physical force which is reasonable and necessary to apprehend and arrest the offender; to prevent the escape of the offender; or to defend himself or herself or a third person from what the protective force officer believes to be the use or threat of imminent use of physical force by the offender. It should be noted that verbal abuse alone by the offender cannot be the basis under any circumstances for use of physical force by a protective force officer.

(b) Protective force officers shall consult the local DOE Office of Chief Counsel and contractor legal counsel, as appropriate, for additional guidance on use of physical force in making arrests.

### **§ 1047.7 Use of deadly force.**

(a) Deadly force means that force which a reasonable person would consider likely to cause death or serious bodily harm. Its use may be justified only under conditions of extreme necessity, when all lesser means have failed or cannot reasonably be employed. A protective force officer is authorized to use deadly force only when one or more of the following circumstances exists:

(1) *Self-Defense.* When deadly force reasonably appears to be necessary to

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protect a protective force officer who reasonably believes himself or herself to be in imminent danger of death or serious bodily harm.

(2) *Serious offenses against persons.* When deadly force reasonably appears to be necessary to prevent the commission of a serious offense against a person(s) in circumstances presenting an imminent danger of death or serious bodily harm (e.g. sabotage of an occupied facility by explosives).

(3) *Nuclear weapons or nuclear explosive devices.* When deadly force reasonably appears to be necessary to prevent the theft, sabotage, or unauthorized control of a nuclear weapon or nuclear explosive device.

(4) *Special nuclear material.* When deadly force reasonably appears to be necessary to prevent the theft, sabotage, or unauthorized control of special nuclear material from an area of a fixed site or from a shipment where Category II or greater quantities are known or reasonably believed to be present.

(5) *Apprehension.* When deadly force reasonably appears to be necessary to apprehend or prevent the escape of a person reasonably believed to: (i) have committed an offense of the nature specified in paragraphs (a)(1) through (a)(4)<sup>1</sup> of this section; or (ii) be escaping by use of a weapon or explosive or who otherwise indicates that he or she poses a significant threat of death or serious bodily harm to the protective force officer or others unless apprehended without delay.

(b) *Additional Considerations Involving Firearms.* If it becomes necessary to use a firearm, the following precautions shall be observed:

(1) A warning, e.g. an order to halt, shall be given, if feasible, before a shot is fired.

(2) Warning shots shall not be fired.

<sup>1</sup>These offenses are considered by the Department of Energy to pose a significant threat of death or serious bodily harm.

## PART 1048—TRESPASSING ON STRATEGIC PETROLEUM RESERVE FACILITIES AND OTHER PROPERTY

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AUTHORITY: Sec. 662, Pub. L. No. 100-531, 102 Stat. 2652 (42 U.S.C. 7270b); section 6, Pub. L. No. 100-185, 101 Stat. 1280 (18 U.S.C. 3571(b)(5)).

SOURCE: 56 FR 1910, Jan. 17, 1991, unless otherwise noted.

### § 1048.1 Purpose.

The regulations in this part are issued for the protection and security of: (a) The Strategic Petroleum Reserve (SPR), its storage or related facilities, and real property subject to the jurisdiction or administration, or in the custody of DOE under part B, title I of the Energy Policy and Conservation Act, *as amended* (42 U.S.C. 6231-6247) (EPCA); and (b) persons upon the SPR or other property subject to DOE jurisdiction under part B, title I of the EPCA.

### § 1048.2 Scope.

The regulations in this part apply to entry into or upon all SPR storage or related facilities, and real property subject to DOE jurisdiction or administration, or in its custody under part B, title I of the EPCA, which have been posted with a notice of the prohibitions and penalties contained in this part.

### § 1048.3 Unauthorized entry.

Unauthorized entry into or upon an SPR facility or real property subject to this part, without authorization, is prohibited.

### § 1048.4 Unauthorized introduction of weapons or dangerous materials.

Unauthorized carrying, transporting, introducing or causing to be introduced into or upon an SPR facility or real