

§ 1047.6

10 CFR Ch. X (1–13 Edition)

§ 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 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)¹ 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.

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

Sec.

1048.1 Purpose.

1048.2 Scope.

1048.3 Unauthorized entry.

1048.4 Unauthorized introduction of weapons or dangerous materials.

1048.5 Violations.

1048.6 Posting.

1048.7 Applicability of other laws.

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

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

Department of Energy

§ 1049.2

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 property subject to this part, of a dangerous weapon, explosive or other dangerous material likely to produce substantial injury or damage to persons or property, is prohibited.

§ 1048.5 Violations.

Willful unauthorized entry, or willful unauthorized introduction of weapons or dangerous materials into or upon real property subject to this part, constitutes a violation of these regulations. Violation of these regulations is a misdemeanor, and a person convicted of violating these regulations is subject to the maximum fine permitted by law, imprisonment for not more than one year, or both.

§ 1048.6 Posting.

Notices stating the pertinent prohibitions of §§ 1048.3 and 1048.4 and the penalties of § 1048.5 will be conspicuously posted at all entrances of each facility or parcel of real property subject to the regulations in this part, and at such intervals along the perimeters thereof as will provide reasonable assurance of notice to persons about to enter.

§ 1048.7 Applicability of other laws.

Nothing in this part shall be construed to affect the applicability of the provisions of State law or of any other Federal law.

[56 FR 1910, Jan. 17, 1991. Redesignated at 56 FR 48096, Sept. 24, 1991]

PART 1049—LIMITED ARREST AUTHORITY AND USE OF FORCE BY PROTECTIVE FORCE OFFICERS OF THE STRATEGIC PETROLEUM RESERVE

Sec.

1049.1 Purpose.

1049.2 Scope.

1049.3 Definitions.

1049.4 Arrest authority.

1049.5 Exercise of arrest authority—General guidelines.

1049.6 Exercise of arrest authority—Use of non-deadly force.

1049.7 Exercise of arrest authority—Use of deadly force.

1049.8 Training of SPR Protective Force Officers and qualification to carry firearms.

1049.9 Firearms and firearms incidents.

1049.10 Disclaimer.

AUTHORITY: 42 U.S.C. 7101 *et seq.*

SOURCE: 56 FR 58492, Nov. 20, 1991, unless otherwise noted.

§ 1049.1 Purpose.

The purpose of these guidelines is to set forth internal Department of Energy (DOE) security policies and procedures regarding the exercise of arrest authority and the use of force by DOE employees and DOE contractor and subcontractor employees while discharging their official duties pursuant to section 661 of the Department of Energy Organization Act.

§ 1049.2 Scope.

These guidelines apply to the exercise of arrest authority and the use of force, as authorized by section 661 of the Department of Energy Organization Act, as amended, 42 U.S.C. 7101 *et seq.*, by employees of DOE and employees of DOE's SPR security contractor and subcontractor. These policies and procedures apply with respect to the protection of:

(a) The SPR and its storage or related facilities; and