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DEPARTMENT OF ENERGY

Office of Fossil Energy

10 CFR Part 1049

Guidelines for the Exercise of Limited Arrest Authority and Use of Force by Protective Force Officers of the Strategic Petroleum Reserve

AGENCY: Strategic Petroleum Reserve Office, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is adopting final regulations prescribing guidelines for the exercise of limited arrest authority and use of force by Protective Force Officers of the Strategic Petroleum Reserve (SPR). These guidelines are in accordance with section 661 of the Department of Energy Organization Act (42 U.S.C. 7270a), and authorize officers guarding the SPR to carry firearms while discharging their official duties, and in certain instances to make arrests without warrant. This action follows publication of a notice of proposed rulemaking on August 1, 1991 (56 FR 36743). No public comments were received in response to that notice.

EFFECTIVE DATE: This final rule will be effective December 20, 1991.

FOR FURTHER INFORMATION CONTACT:

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Durinda Robinson, Office of Chief Counsel, Department of Energy, Strategic Petroleum Reserve, 900 Commerce Road East, New Orleans, Louisiana 70123, (504) 734-4312.

SUPPLEMENTARY INFORMATION:

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I. Background

On August 1, 1991, DOE published a notice of proposed rulemaking to implement section 661 of the Department of Energy Organization Act (42 U.S.C. 7270a) which was added to that Act by Public Law No. 100-531, October 25, 1988, 102 Stat. 2652. Section 661 of the Act authorizes designated employees of the Department of Energy and designated Department of Energy contractors or subcontractors (hereinafter "Protective Force Officer") to carry firearms and make limited warrantless arrests while discharging their official duties. These guidelines set forth procedures uniformly applicable to the exercise of such authority at all SPR sites, and are intended to assist officers in assuring the adequate protection of the SPR and persons and property in or upon the SPR and to assure the reasonable exercise of arrest authority and the reasonable use of force in the course of exercising such authority.

In the notice of proposed rulemaking, DOE invited interested persons to submit comments on the proposed rule by September 3, 1991. DOE did not receive any comments, and the Department has decided to adopt the proposed regulation as final regulations.

II. Summary of the Final Rule

The guidelines prescribed in this final rule establish policies and procedures regarding the exercise of limited arrest authority and authority to carry firearms by DOE employees and employees of DOE contractors and subcontractors while discharging their official duties. These guidelines apply to the exercise of these authorities while protecting the SPR or its storage or related facilities and protecting persons upon the SPR or its storage or related facilities.

This final rule defines "arrest," "deadly force," "contractor," and "SPR," based on current case law and section 661 of the Act. The definitions of "Act," "Protective Force Officer," "suspect" and self-explanatory.

Under this rule, a Protective Force Officer while discharging official duties

may arrest any person without warrant for an offense against the United States if the officer has "reasonable cause" to believe that the person: (1) Has committed or is committing a felony and is in or is fleeing from the immediate area of the crime; or (2) is committing a felony or misdemeanor in the officer's presence. The final rule defines "reasonable grounds" to arrest based on current case law.

This final rule directs Protective Force officers to follow certain arrest procedures to ensure that the suspect is informed of the arrest and the reasons for the arrest, and addresses the officer's authority to search the suspect or the area into which the suspect might reach to obtain a weapon or to destroy evidence. This section also is based upon current case law.

This final rule mandates that the officer advise the suspect of the constitutional right against self-incrimination ("Miranda" warnings) in accordance with current case law. This requirement is not intended to prevent the officer from responding to an imminent danger to himself or to other persons. Therefore, to protect the suspect and the officer in these circumstances, the officer must advise the suspect of this right as soon as practicable after the imminent danger has passed.

This final rule directs Protective Force Officers to transfer custody of arrested suspects to other law enforcement personnel to ensure the protection of the suspect's procedural rights. These guidelines permit limited questioning of suspects by the Protective Force Officer as necessary to protect the SPR and persons upon the SPR, and also permits such questioning as authorized by other law enforcement personnel.

Under this final rule, the officer's authority to use non-deadly force is limited to force that is "reasonable and necessary" to apprehend or arrest the suspect to prevent escape or to defend the officer or other persons from what the officer "reasonably believes" to be the use or threat of imminent use of non-deadly force by the suspect. Verbal abuse is not the basis for use of non-deadly force by the officer. Protective Force Officers are directed to consult with DOE counsel and contractor counsel to assure the application of uniform policy among SPR sites.

In accordance with current case law and law enforcement practice, these guidelines limit the officer's authority to use deadly force, and states that the officer shall give a verbal warning if feasible, and shall not fire warning shots.

The regulation authorizes officers that have completed the basic training course to carry firearms and to use arrest authority. The regulation describes the basic training course, requires Protective Force Officers to maintain firearms competency by subsequent annual training, and addresses qualification for the use of firearms. The regulation also sets forth departmental policy regarding: (1) The type of firearms used; (2) security, inventory, and maintenance of firearms; (3) suspension of officers due to incidents involving use of firearms; and (4) reporting and investigation of firearms incidents.

Section 1049.10 of this regulation precludes any action by any person based upon these guidelines, which are prescribed solely for internal guidance. Thus, these guidelines do not, and may not be relied upon to create, any substantive or procedural rights enforceable at law by any party in any civil or criminal proceeding.

III. Procedural Requirements

A. Section 501 of the DOE Organization Act

The notice of proposed rulemaking was promulgated under section 501(c) of the DOE Organization Act in accordance with section 553 of title 5, United States Code, based upon our finding that no substantial issue of fact or law existed and that this rule is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses.

B. Environmental Review

This rulemaking is not a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

C. Review Under Executive Order No. 12291

DOE has determined that the incremental effect of today's final rule will not have the magnitude of effects on the economy to bring the rule within the definition of a "major rule" contained in Executive Order No. 12291. This rule imposes no regulatory burden on the economy, on individuals, public or private organizations, or State and local governments. The rule is not likely to

result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, and local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Pursuant to the Executive Order, this final rule was reviewed by the Office of Management and Budget (OMB).

D. Review Under Executive Order No. 12612

Executive Order No. 12612 requires that rules be reviewed for Federalism effects on the institutional interest of states and local governments, and if the effects are sufficiently substantial, preparation of a Federalism assessment is required to assist senior policymakers. This final rulemaking to implement section 661 of the DOE Organization Act will not have any substantial direct effects on State and local governments within the meaning of the Executive Order. The final rulemaking affects Federal agency property that is not subject to direct State regulation.

E. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, Public Law No. 96-345 (5 U.S.C. 601-612), requires that an agency prepare an initial regulatory flexibility analysis to be published at the time the rule is published. The requirement (which appears in section 603 of the Act) does not apply if the agency "certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." This rule will not have any economic impact.

F. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 10 CFR Part 1049

Federal buildings and facilities, Government contracts, Law enforcement, Security measures.

Issued in Washington, DC, on November 8, 1991.

Linda G. Stuntz,

Acting Assistant Secretary for Fossil Energy.

Accordingly, a new part 1049 is hereby added to chapter X, title 10 of the Code of Federal Regulations, as set forth below:

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

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

§ 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

(b) Persons upon the SPR or its storage or related facilities.

§ 1049.3 Definitions.

(a) *Act* means sections 661 of the Department of Energy Organization Act, as amended, (42 U.S.C. 7270a).

(b) *Arrest* means an act resulting in the restriction of a person's movement, other than a brief consensual detention for purposes of questioning about a person's identity and requesting

identification, accomplished by means of force or show of authority under circumstances that would lead a reasonable person to believe that he was not free to leave the presence of the officer.

(c) *Contractor* means a contractor or subcontractor at any tier.

(d) *Deadly force* means that force which a reasonable person would consider likely to cause death or serious bodily harm.

(e) *Protective Force Officer* means a person designated by DOE to carry firearms pursuant to section 661 of the Act.

(f) *SPR* means the Strategic Petroleum Reserve, its storage or related facilities, and real property subject to the jurisdiction or administration, or in the custody of the Department of Energy under part B of title I of the Energy Policy and Conservation Act (42 U.S.C. 6231-6247).

(g) *Suspect* means a person who is subject to arrest by a Protective Force Officer as provided in these guidelines.

§ 1049.4 Arrest authority.

(a) Under the Act, the authority of a DOE Protective Force Officer to arrest without warrant is to be exercised only in the performance of official duties of protecting the SPR and persons within or upon the SPR.

(b) A Protective Force Officer is authorized to make an arrest for a felony committed in violation of laws of the United States, or for a misdemeanor committed in violation of laws of the United States if the offense is committed in the officer's presence.

(c) A Protective Force Officer also is authorized to make an arrest for a felony committed in violation of laws of the United States if the Officer has reasonable grounds to believe that the felony has been committed, or that the suspect is committing the felony, and is in the immediate area of the felony or is fleeing the immediate area of the felony. "Reasonable grounds to believe" means that the facts and circumstances within the knowledge of the Protective Force Officer at the moment of arrest, and of which the Protective Force Officer has reasonably trustworthy information, would be sufficient to cause a prudent person to believe that the suspect had committed or was committing a felony.

§ 1049.5 Exercise of Arrest Authority—General Guidelines.

(a) In making an arrest, and before taking a person into custody, the Protective Force Officer should:

(1) Announce the Protective Force Officer's authority (e.g., by identifying

himself as an SPR Protective Force Officer);

(2) State that the suspect is under arrest; and

(3) Inform the suspect of the crime for which the suspect is being arrested. If the circumstances are such that making these announcements would be useless or dangerous to the Officer or to another person, the Protective Force Officer may dispense with these announcements.

(b) At the time and place of arrest, the Protective Force Officer may search the person arrested for weapons and criminal evidence, and may search the area into which the person arrested might reach to obtain a weapon to destroy evidence.

(c) After the arrest is effected, the person arrested shall be advised of his constitutional right against self-incrimination ("Miranda warnings"). If the circumstances are such that immediately advising the person arrested of this right would result in imminent danger to the Officer or other persons, the Protective Force Officer may postpone this requirement. The person arrested shall be advised of this right as soon as practicable after the imminent danger has passed.

(d) As soon as practicable after the arrest is effected, custody of the person arrested should be transferred to other Federal law enforcement personnel (e.g., U.S. Marshals or FBI agents) or to local law enforcement personnel, as appropriate, in order to ensure that the person is brought before a magistrate without unnecessary delay.

(e) Ordinarily, the person arrested shall not be questioned or required to sign written statements unless such questioning is:

(1) Necessary to establish the identity of the person arrested and the purpose for which such person is within or upon the SPR;

(2) Necessary to avert an immediate threat to security or safety (e.g., to locate a bomb); or

(3) Authorized by other Federal law enforcement personnel or local law enforcement personnel responsible for investigating the alleged crime.

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

(a) When a Protective Force Officer is authorized to make an arrest as provided in the Act, the Protective Force Officer may use only that degree of non-deadly force that is reasonable and necessary to apprehend and arrest the suspect in order to prevent escape or to defend the Protective Force Officer or other persons from what the Officer reasonably believes to be the use or threat of imminent use of non-deadly

force by the suspect. Verbal abuse by the suspect, in itself, is not a basis for the use of non-deadly force by a Protective Force Officer under any circumstances.

(b) Protective Force Officers should consult the local DOE Office of Chief Counsel and contractor legal counsel for additional guidance on the use of non-deadly force in the exercise of arrest authority, as appropriate.

§ 1049.7 Exercise of arrest authority—Use of deadly force.

(a) The use of deadly force is authorized only under exigent circumstances where the Protective Force Officer reasonably believes that such force is necessary to:

(1) Protect himself from an imminent threat of death or from serious bodily harm;

(2) Protect any person or persons in or upon the SPR from an imminent threat of death or serious bodily harm.

(b) If circumstances require the use of a firearm by a Protective Force Officer, the Officer shall give a verbal warning (e.g., an order to halt), if feasible. A Protective Force Officer shall not fire warning shots under any circumstances.

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

(a) Protective Force Officers shall successfully complete training required by applicable Department of Energy orders prior to receiving authorization to carry firearms. The Department of Energy Office of Safeguards and Security shall approve the course.

(b) Prior to initial assignment to duty, Protective Force Officers shall successfully complete a basic qualification training course which equips them with at least the minimum level of competence to perform tasks associated with their responsibilities. The basic course shall include the following subject areas:

- (1) Legal authority, including use of deadly force and exercise of limited arrest authority;
- (2) Security operations, including policies and procedures;
- (3) Security tactics, including tactics for Protective Force Officers acting alone or as a group;
- (4) Use of firearms, including firearms safety and proficiency with all types of weapons expected to be used;
- (5) Use of non-deadly weapons, weapon-less self-defense, and physical conditioning;
- (6) Use of vehicles, including vehicle safety in routine and emergency situations;

- (7) Safety, first aid, and elementary firefighting procedures;
- (8) Operating in such a manner as to preserve SPR sites and facilities;
- (9) Communications, including methods and procedures.

(c) After completing training, and receiving the appropriate security clearance, Protective Force Officers shall be authorized to carry firearms and exercise limited arrest authority. Protective Force Officers shall receive an identification card, which must be carried whenever on duty and whenever armed.

(d) On an annual basis, each Protective Force Officer must successfully complete training sufficient to maintain at least the minimum level of competency required for the successful performance of all assigned tasks identified for Protective Force Officers.

(e) Protective Force Officers shall be qualified in the use of firearms by demonstrating proficiency in the use of firearms on a semiannual basis prior to receiving authorization to carry firearms. Protective Force Officers shall demonstrate proficiency in the use of all types of weapons expected to be used while on duty under both day and night conditions. In demonstrating firearms proficiency, Protective Force Officers shall use firearms of the same type and barrel length as firearms used by Protective Force Officers while on duty, and the same type of ammunition as that used by Protective Force Officers on duty. Before a Protective Force Officer is qualified in the use of firearms, the Officer shall complete a review of the basic principles of firearms safety.

(f) Protective Force Officers shall be allowed two attempts to qualify in the use of firearms. Protective Force Officers shall qualify in the use of firearms within six months of failing to qualify. If an Officer fails to qualify, the Officer shall complete a remedial firearms training program. A Protective Force Officer who fails to qualify in the use of firearms after completion of a remedial program, and after two further attempts to qualify shall not be authorized to carry firearms or to exercise limited arrest authority.

§ 1049.9 Firearms and firearms incidents.

(a) Protective Force Officers shall receive firearms of a type suitable to adequately protect persons and property within or upon the SPR. Firearms and ammunition shall be secured, inventoried, and maintained in accordance with applicable Department of Energy orders, when not in use.

(b) The authority of a Protective Force Officer to carry firearms and to exercise

limited arrest authority shall be suspended if the Officer participates in an incident involving the use of firearms. In such circumstances, the Officer shall be assigned to other duties, pending completion of an investigation.

(c) Incidents involving the discharge of firearms shall be reported to the Department of Energy Headquarters Emergency Operations Center immediately, and to the SPR Project Management Office Security Division within 24 hours. The Strategic Petroleum Reserve Project Manager shall appoint a committee to investigate the incident.

§ 1049.10 Disclaimer.

These guidelines are set forth solely for the purpose of internal Department of Energy guidance. These guidelines do not, and are not intended to, and may not be relied upon to, create any substantive or procedural rights enforceable at law by any party in any matter, civil or criminal. These guidelines do not place any limitations on otherwise lawful activities of Protective Force Officers or the Department of Energy.

[FR Doc. 91-27800 Filed 11-19-91; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-AWS-07; Amdt. 39-8100; AD 91-24-13]

Airworthiness Directives; Sikorsky Aircraft Model S-76A Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Sikorsky Aircraft Model S-76A helicopters, which supersedes an existing AD. This amendment requires repetitive inspections of the vertical pylon to detect cracking in the forward spar components, but limits these inspections to only those helicopters which have not had the forward spar reinforced with steel straps and a one-piece doubler. This amendment is needed to prevent crack growth in unmodified spars which could result in loss of control of the helicopter and to eliminate spar inspection requirements for helicopters with strengthened spars.

EFFECTIVE DATE: December 20, 1991.

ADDRESSES: The applicable service bulletins may be obtained from Sikorsky

Aircraft, 600 Main Street, Stratford, Connecticut 06601-1381, or may be examined in the Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Building 3B, room 158, Fort Worth, Texas, 76193-0007.

FOR FURTHER INFORMATION CONTACT:

Richard B. Noll, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Executive Park, Burlington, Massachusetts, 01803, telephone (617) 273-7111.

SUPPLEMENTARY INFORMATION: A

proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 83-17-07, Amendment 39-4711 (48 FR 39052), August 29, 1983, as amended by Amendment 39-5017 (50 FR 15099, April 17, 1985), and Amendment 39-5332 (51 FR 24134, July 2, 1986), which is applicable to Sikorsky Aircraft Model S-76A helicopters, was published in the Federal Register on April 25, 1991 (56 FR 19044). The proposal limits repetitive inspections of the vertical pylon forward spar of Sikorsky Model S-76A helicopters to those helicopters which have not had the forward spar reinforced with steel straps and a one-piece doubler.

AD 83-17-01, as amended, currently requires a repetitive inspection for cracks in the vertical pylon forward spar caps and web on all Sikorsky S-76A helicopters. The FAA has determined that a modification designed by the manufacturer to add steel straps to the forward spar caps and a one-piece doubler to the forward spar web provides a level of safety for which repetitive inspections are no longer necessary. Therefore, the FAA is superseding AD 83-17-07 by changing the applicability statement to exclude any Sikorsky S-76A helicopters that have this modification installed.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received in which a manufacturer indicated concurrence with the proposed amendment. The proposal is adopted without any changes.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implication to