

Department of Energy

§ 1047.4

AUTHORITY: Sec. 2201, Pub. L. 83-703, 68 Stat. 919 (42 U.S.C. 2011 et seq.); Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7101 et seq.).

SOURCE: 50 FR 30929, July 31, 1985, unless otherwise noted.

GENERAL PROVISIONS

§ 1047.1 Purpose.

The purpose of this part is to set forth Department of Energy (hereinafter "DOE") policy and procedures on the exercise of arrest authority and use of force by protective force personnel.

§ 1047.2 Scope.

This part applies to DOE and DOE contractor protective force personnel armed pursuant to section 161.k. of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) to protect nuclear weapons, special nuclear material, classified matter, nuclear facilities, and related property.

§ 1047.3 Definitions.

(a) *Act* means section 161.k. of the Atomic Energy Act of 1954, as amended, (42 U.S.C. 2201.k.).

(b) *Arrest* means any act, including taking, seizing or detaining of a person, that indicates an intention to take a person into custody and that subjects the person to the control of the person making the arrest.

(c) *Citizen's Arrest* means that type of arrest which can be made by citizens in general and which is defined in the statutory and case law of each state.

(d) *Contractor* means contractors and subcontractors at all tiers.

(e) *LLEA* means local law enforcement agencies: city, county; and state.

(f) *Offender* means the person to be arrested.

(g) *Protective Force Officer* means any person authorized by DOE to carry firearms under section 161.k. of the Atomic Energy Act of 1954.

(h) *Special Nuclear Material* (SNM) means: (1) Plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which DOE, pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, determines to be special nuclear material, but does not include source material; or (2) any material artifi-

cially enriched by any of the foregoing, but does not include source material.

§ 1047.4 Arrest authority.

(a) Under the Act, the authority of a DOE protective force officer to arrest without warrant is limited to the performance of official duties and should be exercised only in the enforcement of:

(1) The following laws only if property of the United States which is in the custody of the DOE or its contractors is involved:

(i) *Felonies*: (A) Arson—18 U.S.C. 81—(only applicable to "special maritime and territorial jurisdiction of the United States" as defined by 18 U.S.C. 7).

(B) Building or property within special maritime and territorial jurisdiction—18 U.S.C. 1363—(only applicable to "special maritime and territorial jurisdiction of United States" as defined by 18 U.S.C. 7).

(C) Civil disorder—18 U.S.C. 231.

(D) Communication lines, stations or systems—18 U.S.C. 1362.

(E) Concealment, removal or mutilation generally—18 U.S.C. 2071.

(F) Conspiracy—18 U.S.C. 371—(violation of this section is a felony if the offense which is the object of the conspiracy is a felony).

(G) Destruction of motor vehicles or motor vehicle facilities—18 U.S.C. 33.

(H) Explosives—18 U.S.C. 844(f).

(I) Government property or contracts—18 U.S.C. 1361—(violation of section is a felony if property damage exceeds \$100).

(J) Military, naval or official passes—18 U.S.C. 499—(pertains to forging or altering official passes).

(K) Personal property of the United States—18 U.S.C. 2112.

(L) Public money, property, or records—18 U.S.C. 641—(violation of section is a felony if the property value exceeds \$100).

(M) Sabotage—18 U.S.C. 2151, 2153-2156.

(N) Violation under Physical Security Convention—18 U.S.C. 831.

(ii) *Misdemeanors*: (A) Conspiracy—18 U.S.C. 371—(violation of section is a misdemeanor if the offense which is the object of the conspiracy is a misdemeanor).

§ 1047.5

10 CFR Ch. X (1–1–06 Edition)

(B) Explosives—18 U.S.C. 844(g).

(C) Government property or contracts—18 U.S.C. 1361—(violation of section is a misdemeanor if the property damage does not exceed \$100).

(D) Official badges, identification cards, other insignia—18 U.S.C. 701—(pertains to the manufacture, sale, and possession of official insignia).

(E) Public money, property or records—18 U.S.C. 641—(violation of section is a misdemeanor if the property value does not exceed \$100).

(2) The following criminal provisions of the Atomic Energy Act:

(i) *Felonies*: (A) Section 222. Violation of Specific Sections—42 U.S.C. 2272.

(B) Section 223. Violation of Sections Generally. 42 U.S.C. 2273.

(C) Section 224. Communication of Restricted Data—42 U.S.C. 2274.

(D) Section 225. Receipt of Restricted Data—42 U.S.C. 2275.

(E) Section 226. Tampering with Restricted Data—42 U.S.C. 2276.

(ii) *Misdemeanors*: (A) Section 227. Disclosure of Restricted Data—42 U.S.C. 2277.

(B) Section 229. Trespass Upon Commission (DOE) Installations—42 U.S.C. 2278.

(C) Section 230. Photographing, etc., of Commission (DOE) Installations—42 U.S.C. 2278.b.

(b) *Felony Arrests*. A protective force officer is authorized to make an arrest for any felony listed in paragraph (a)(1)(i) or (a)(2)(i) of this section if the offense is committed *in the presence* of the protective force officer or if he or she has *reasonable grounds to believe* that the individual to be arrested has committed or is committing the felony.

(1) *In the presence of* means that the criminal act must have taken place in the physical presence of (under the observation of) the protective force officer. Knowledge of the existence of a criminal violation obtained in any other way (e.g., information from other persons) is not sufficient to permit an arrest under this part of the Act.

(2) *Reasonable grounds to believe* means that, at the moment of arrest, either the facts and circumstances within the knowledge of the protective force officer, or of which the protective force officer had reasonably trust-

worthy information, were sufficient to cause a prudent person to believe that the suspect had committed or was committing the offense.

(c) *Misdemeanor Arrest*. A protective force officer is authorized to make an arrest for any misdemeanor listed in paragraph (a)(1)(ii) or (a)(2)(ii) of this section if the offense is committed in the presence of the protective force officer.

(d) *Other Authority*. The Act does not provide authority to arrest for violations of state criminal statutes or for violations of federal criminal statutes other than those listed in paragraph (a) of this section. Therefore, arrests for violations of such other criminal statutes shall be made by other peace officers (e.g., U.S. Marshals or Federal Bureau of Investigation (FBI) agents for 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