

1. A) WHO REGULATES WORKER SAFETY AND HEALTH FOR FEDERAL EMPLOYEES AT DOE STRATEGIC PETROLEUM RESERVE FACILITIES; AND B) WHAT HEALTH AND SAFETY STANDARDS APPLY AT THOSE FACILITIES?

ANSWERS: 1.A). Section 19 of the Occupational Safety and Health (OSH) Act (P.L. Pub. L. 91-596), as amended, codified at 29 U.S.C. Sec. 668, provides, in pertinent part, that "[i]t shall be the responsibility of the head of each Federal agency . . . to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated [by the Occupational Health and Safety Administration (OSHA)]." In addition, Executive Order 12196, Occupational Safety and Health Programs for Federal Employees, confers certain additional authorities to the Department of Labor regarding the safety of federal employees, including the authority to inspect the facilities of other federal agencies.

Although Sec. 4(b)(1) of the OSH Act, codified at 29 U.S.C. Sec. 653(b)(1), exempts "working conditions of employees with respect to which other Federal agencies . . . exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health" and, with certain limited exceptions, DOE has such statutory authority under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended and the Department of Energy Organization Act, as amended, to regulate worker safety and health in furtherance of its own statutory functions, DOE and OSHA agreed in a 1992 MOU with that OSHA would regulate worker safety and health of DOE employees.  
[http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=MOU&p\\_id=240](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=MOU&p_id=240). Thus, OSHA's regulations at 29 C.F.R. Part 1960, Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters, would apply to federal employee worker safety and health at the Strategic Petroleum Reserve Facilities.

1.B). Title 29 CFR Part 1960, makes, among other OSHA regulations, 29 C.F.R. Part 1910, Occupational Safety and Health Standards, applicable to federal agencies. See § 1960.16, Compliance with OSHA standards ("Each agency head shall comply with all occupational safety and health standards issued under section 6 of the Act, or with alternate standards issued pursuant to this subpart"). In addition, DOE has adopted some more stringent standards in DOE O 440.1B, Worker Protection Program for DOE (Including the National Nuclear Security Administration) Federal Employees, which would apply to federal employee worker safety and health at the Strategic Petroleum Reserve Facilities, to the extent that the more stringent standards pertain to the activities at those facilities. (Note: it is possible that the more stringent standards in DOE O 440.1B do not apply simply because there are no activities at the Strategic Petroleum Reserve Facilities to which these additional standards pertain).

2. A) WHO REGULATES WORKER SAFETY AND HEALTH FOR DOE PRIME CONTRACTOR EMPLOYEES AT DOE STRATEGIC PETROLEUM RESERVE FACILITIES; AND B) WHAT HEALTH AND SAFETY STANDARDS APPLY AT THOSE FACILITIES?

ANSWERS: 2.A). As mentioned above, DOE and OSHA entered into an MOU in 1992 which delineated the two agencies' respective regulatory authorities in DOE facilities. Although the 1992 MOU has expired, the

two Agencies continue to operate consistent with the terms of the MOU. Pursuant to that MOU, DOE agreed that it would periodically provide a list to OSHA indicating which DOE facilities DOE regulates which would, therefore, be exempt from OSHA regulation pursuant to Sec. 4(b)(1) of the OSH Act. See the more detailed discussion about Sec. 4(b)(1), above. However, in practice, DOE has periodically provided OSHA with a list of DOE facilities that DOE does not regulate. The Strategic Petroleum Reserve facilities are among those that DOE has listed as not regulated by DOE. Consequently, by agreement, OSHA regulates worker safety and health for DOE contractor employees at the Strategic Petroleum Reserve facilities.

2.B). Since OSHA regulates worker safety and health at the Strategic Petroleum Reserve facilities, OSHA's regulations, including 29 C.F.R Part 1910, are applicable.

3. A) WHO REGULATES WORKER SAFETY AND HEALTH FOR DOE SUBCONTRACTOR EMPLOYEES AT DOE STRATEGIC PETROLEUM RESERVE FACILITIES; AND B) WHAT HEALTH AND SAFETY STANDARDS APPLY AT THOSE FACILITIES?

ANSWERS: 3.A). On June 29, 2006, OSHA issued a Federal Register Final Rule amending 29 C.F.R. Part 1952, Approved State Plans for Enforcement of State Standards. 71 Fed. Reg. 36988-36991. In the preamble to this Final Rule, OSHA explained that the rule was being amended to reflect the fact that certain OSHA State Plan States would be regulating private DOE contractors who are not under contract to regulate entire facilities (e.g., subcontractors to DOE GOCOs). However, the Strategic Petroleum Reserve Facilities are not among those over which any OSHA State Plan States would be exercising jurisdiction to regulate occupational safety and health. Therefore, OSHA regulates worker safety and health for DOE subcontractor employees at Strategic Petroleum Reserve Facilities.

3.B). As in the case of DOE contractor employees at the Strategic Petroleum Reserve facilities, OSHA's regulations apply to worker safety and health of the DOE subcontractor employees at those facilities.