Department of Energy
Germantown, MD 20874-1290

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MEMORANDUM FOR DISTRIBUTION

FROM: GLENN S. PODONSKY
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OFFICE OF HEALTH, SAFETY AND SECURITY

SUBJECT: Contractor Protective Force Law Enforcement Authority

It has come to our attention that the Department of Energy's (DOE) Office of Inspector General (OIG) has investigated allegations that contractor protective force (PF) personnel at a DOE site exceeded their legislative, regulatory, and policy-based authority by providing on-duty, armed off-site assistance to local law enforcement authorities during other-than recapture/recovery operations, and by accessing the local law enforcement database for background checks during the course of on-site administrative traffic stops. While there is no reason to believe that such practices are common, I am requesting that each office review its law enforcement authorities and ensure they are within the parameters specified under Title 10, Code of Federal Regulations (C.F.R.), Part 1047 (10 C.F.R. 1047).

10 C.F.R. 1047, "Limited Arrest Authority and Use of Force by Protective Force Officers," is drawn from section 161.k. of the Atomic Energy Act of 1954, as amended [42 USC 2201(k)], and provides the guidance for implementation of arming, arrest, and application of force responsibilities/authorities by PF personnel within the DOE. The only exception is the Strategic Petroleum Reserve (SPR) Project which is governed by 10 C.F.R. 1049, "Limited Arrest Authority and Use of Force by Protective Force Officers of the Strategic Petroleum Reserve." Section 661 of the DOE Organization Act [42 USC 7270.a] is the basis for the authority contained in 10 C.F.R. 1049. DOE M 470.4-3A, *Contractor Protective Force*, provides implementing policy for both 10 C.F.R. 1047 and 10 C.F.R. 1049.

With the exception of fresh pursuit, which, under very specific circumstances may be authorized to enable the off-site apprehension of someone suspected of having committed an offense on site, PF law enforcement/arrest authority is limited to the performance of official duties on DOE property or while escorting certain DOE property off site. DOE M 470.4-3A requires that plans, post orders, general orders, and procedures for the conduct of routine and emergency operations be developed and that they must be clear, concise, and current. Also, Attachment 1, II.2.(1)(e) states that, "All PF personnel must demonstrate . . . knowledge of Federal- and State-granted authority applicable to assigned activities and responsibilities between the PF and other law enforcement authorities; . . ." Among numerous references relating to knowledge, skills, abilities, and training requirements, V.2.a.(7) requires that, "Legal requirements and responsibilities including

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use of deadly force, site-specific rules of engagement . . . , limited arrest authority . . . , and fresh pursuit" be taught.

Please ensure that all PF contractors are reminded that off-site assistance to local law enforcement authorities by DOE contractor personnel is not permitted by existing laws and regulations. This prohibition also applies to actions taken by the PF member acting as a private citizen when the appearance of the PF member may lead others to believe they are acting in an official capacity. For example, if the PF member is utilizing a marked PF vehicle and wearing a PF uniform, a reasonable assumption by others is that the PF member is acting in the course of official duties.

Also, please ensure that all PF members are reminded that accessing law enforcement databases for the purpose of obtaining personal or criminal background information during administrative traffic stops executed during official duties exceeds the scope of PF duties authorized by current policy. In light of some recent cases where contractor protective officers may have exceeded the authorities specified in the directives, regulations, and legislation cited above, it would be prudent to review general and post orders, site procedures, and applicable training materials at sites under your purview to ensure all are current and conform to DOE policy.

If a contractor PF member is operating under the aegis of state or local law enforcement authority; e.g., as Special State Constables, while also on duty as a contractor PF member, his or her authorities and responsibilities may be expanded in accordance with the applicable legislation and regulations.

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