

SUBJECT: CONDUCT AND APPROVAL OF SELECT AGENT AND TOXIN WORK AT
DEPARTMENT OF ENERGY SITES

PURPOSE AND SCOPE

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107-188) directs the Secretary of Energy and the Administrator of the National Nuclear Security Administration to expand, enhance, and intensify research relevant to the rapid detection and identification of select agents and toxins likely to be used in a bioterrorism attack or other select agents and toxins that may cause a public health emergency.

In meeting its obligations under the Public Health Security and Bioterrorism Preparedness and Response Act, the Department of Energy (DOE) places a high priority on occupational health, safety and security and emergency management, as well as its responsibility for protecting the public and environment from any hazards resulting from these activities.

The purpose of this policy is to establish the Department's expectations for the establishment and operation of DOE research laboratories utilizing select agents and toxins (as regulated by the United States Department of Health and Human Services), hereinafter called LABS, and to ensure future policy needs for the operation, coordination, and oversight of these LABS.

POLICY

The Department will not authorize any biosafety level (BSL)-4 activity at LABS or allow BSL-4 operations to be conducted at DOE facilities or on DOE sites.

The Department will not authorize any laboratory operations with select agents and toxins including those which may be part of classified Work for Others or similar projects (including work involving Sensitive Compartmented Information (SCI) or Special Access Programs (SAPs) without the head of the DOE field element being fully informed of the details of the operations.

The Department will oversee and approve the building and operations of any DOE LABS.

All research activities performed by DOE or DOE contractors in LABS will comply with all applicable DOE regulations and directives as well as other applicable federal, state, and local regulations.

BSL-3 labs will follow current DOE procedures and policy. If necessary, DOE will establish additional specific guidance to ensure safe construction and operation of BSL-3 LABS. Any new construction of BSL-3 LABS must be conducted in accordance with DOE O 413.3A Chg 1, *Program and Project Management for the Acquisition of Capital Assets*, dated 7-28-06, as modified by Chg 1, dated 11-17-08.

DOE will develop a long-term strategy for Departmental coordination of current and future research activity involving select agents and toxins. It will ensure a cooperative relationship is developed with the United States Department of Health and Human Services and the United States Department of Agriculture (USDA) in their regulatory oversight of DOE select agent and toxin activities.

DOE will ensure that any agency requesting work be responsible for all costs incurred by DOE contractor(s) performing work for that agency for which DOE is required to reimburse the contractor(s). Such costs include any and all third party liability costs incurred by the contractor and reimbursed by DOE in accordance with the "Insurance- litigation and claims" clause (DEAR 970.5228-1) contained in DOE's contract with the contractor. To the extent that DOE may incur any liabilities in regards to the performance of the work directly, DOE will ensure that the agency requesting the work will reimburse DOE for such liabilities.

APPLICABILITY

This Policy applies to the development, construction, and operation of research laboratories utilizing select agents and toxins.

RESPONSIBILITIES

1. The heads of the Program Secretarial Office (PSO) is responsible for the formal approval of the establishment of any new BSL-3 research laboratory intended for conducting research on or otherwise utilizing select agents and toxins.
2. The heads of DOE field elements are responsible for ensuring the full implementation of this policy at the respective field facility.
3. The DOE Biosurety Executive Working Group, in concert with the Department of Homeland Security and other federal agencies utilizing DOE laboratories, will be responsible for developing a long-term strategy for research activities involving select agents and toxins.

REFERENCES

- Public Law 91-190, National Environmental Policy Act (NEPA) of 1969, as amended, codified at 42 U.S.C. Sections 4321-4347
- 7 CFR Part 331, "Possession, Use and Transfer of Select Agents and Toxins"
- 9 CFR Part 121, "Possession, Use and Transfer of Select Agents and Toxins"
- 42 CFR Part 72, "Interstate Shipment of Etiological Agents"
- 42 CFR Part 73, "Select Agents and Toxins"
- 42 CFR Part 1003, "Civil Money Penalties, Assessments and Exclusions"

- 10 CFR Part 851, “Worker Safety and Health Program”, Appendix A, Section. 7, “Biological Safety”
- Biosafety in Microbiological and Biomedical Laboratories (BMBL). 5th Edition. Centers for Disease Control and Prevention



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