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Notice; Addendum to the Memorandum of Understanding: To Formalize the Working Relationship Between the Department of Energy and the Department of Labor (August 28, 1992) - 70: 21818-21819

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DEPARTMENT OF ENERGY

Office of the Environment, Safety and Health

Notice; Addendum to the Memorandum of Understanding: To Formalize the Working Relationship Between the Department of Energy and the Department of Labor (August 28, 1992)

AGENCIES: The Department of Labor, Occupational Safety and Health Administration (OSHA); Department of Energy, Office of the Environment, Safety and Health.

ACTION: Addendum to Memorandum of Understanding between the Department of Labor and the Department of Energy: The construction and operation by the University of Chicago of a Regional Biocontainment Laboratory located at Argonne National Laboratory; transfer of worker safety and health authority from the Department of Energy (DOE) to the Occupational Safety and Health Administration (OSHA) for a portion of land that has been leased to the private sector for construction and operation of a Regional Biocontainment Laboratory at Argonne National Laboratory, a DOE Government-Owned and Contractor-Operated (GOCO) facility.

SUMMARY: This notice is an addendum to the 1992 interagency Memorandum of Understanding (MOU) between the U.S. Department of Labor and the U.S. Department of Energy. That MOU states that DOE has exclusive authority over the occupational safety and health of contractor employees at DOE GOCOs. In addition, the MOU between the departments dated July 25, 2000 on safety and health enforcement at privatized facilities and operations provides that OSHA has regulatory authority over occupational safety and health at certain privatized facilities and operations on DOE land leased to private enterprises. This action is taken in accordance with the July 25, 2000 MOU, which establishes specific interagency procedures for the transfer of occupational safety and health coverage for such privatized facilities and operations from DOE to OSHA. The MOUs may be found on the internet via the OSHA Web page <http://www.osha.gov> under the "D" for Department of Energy Transition

Activities.

EFFECTIVE DATE: May 27, 2005.

FOR FURTHER INFORMATION CONTACT: Trese Louie, Office of Technical Programs and Coordination Activities, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-3653, 200 Constitution Avenue, NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION: On August 10, 1992, the U.S. Department of Energy (DOE) and the Occupational Safety and Health Administration of the Department of Labor (OSHA) entered into a Memorandum of Understanding, delineating regulatory authority over the occupational safety and health of contract employees at DOE Government-Owned or Leased Contractor-Operated (GOCO) facilities. In general, the memorandum of understanding recognizes that DOE exercises statutory authority under section 161(f) of the Atomic Energy Act of 1954, as amended, [42 U.S.C. 2201(f)], relating to the occupational safety and health of private-sector employees at these facilities.

Section 4(b)(1) of the Occupational Safety and Health Act of 1970, 29 U.S.C. 653(b)(1), exempts from OSHA authority working conditions with respect to which other federal agencies have exercised statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health. The 1992 Memorandum of Understanding acknowledges DOE's extensive regulation of contractor health and safety through safety orders, which require contractor compliance with all OSHA standards as well as additional requirements prescribed by DOE, and concludes with an agreement by the agencies that the provisions of the Occupational Safety and Health Act will not apply to GOCO sites for which DOE has exercised its authority to regulate occupational safety and health under the Atomic Energy Act.

In light of DOE's policy emphasis on privatization activities, OSHA and DOE entered into a second Memorandum of Understanding on July 25, 2000; that establishes interagency procedures to address regulatory authority for occupational safety and health at specified privatized facilities and operations on DOE sites. The 2000 Memorandum of Understanding specifically covers facilities and operations on lands that have been leased to private enterprises, which are not conducting

activities for or on behalf of DOE and where there is no likelihood that any employee exposure to radiation from DOE sources would be 25 millirems per year (mrem/yr) or more.

On September 30, 2003, the National Institute of Allergy and Infectious Diseases (NIAID), one of the National Institutes of Health (NIH), in the U.S. Department of Health and Human Services, announced that it will fund nine regional biocontainment laboratories (RBL) for the study of organisms important to national biodefense efforts as well as organisms causing emerging infectious diseases. The Ricketts Regional Biocontainment Laboratory was proposed in early February 2003 by the University of Chicago in support of a Midwestern Regional Center of Excellence (RCE), a consortium of prominent medical research organizations in the upper Midwest. In September 2003, the U.S. Department of Health and Human Services announced a grant of \$35 million over five years to support the center.

The Ricketts Regional Biocontainment Lab will be a biosafety level 3 (BSL-3) laboratory designed to safely conduct research on microbes that can cause potentially lethal diseases. It will be located at a site leased from DOE at Argonne National Laboratory--East, 25 miles southwest of Chicago, Illinois. Argonne is operated by the University of Chicago, a private university, for the United States Department of Energy.

In accordance with the July 25, 2000 MOU, on November 24, 2003, DOE notified OSHA of its intent to lease land to the University of Chicago for the purpose of constructing and operating a Regional Biocontainment Laboratory at the Argonne National Laboratory-East for the National Institutes of Health. The letter stated that the laboratory would be operated by the University of Chicago, a private institution, to conduct research for NIH (as opposed to DOE). It also stated that the radiological dose to workers at the RBL would be much less than 25 mrems/year from all DOE sources. In addition, the University of Chicago will own and operate the RBL and DOE will not have a contractual relationship with the University relating to that facility. DOE will not have statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health at the RBL. Thus, as the letter stated, the section 4(b)(1) exemption to the OSH Act would not apply to the RBL. Therefore, the letter requested, in accordance with the 2000 MOU, that OSHA confirm that it will regulate occupational safety and health at the RBL. On February 10, 2004, OSHA responded to this letter, stating that it would review this request.

Accordingly, after reviewing pertinent information OSHA, in a letter to DOE dated November 17, 2004, agreed to accept regulatory authority for occupational safety and health over this site. This Federal Register Notice is published as an addendum to the August 28, 1992 Memorandum of Understanding between the U.S. Department of Labor and U.S. Department of Energy. Federal OSHA has regulatory authority over occupational safety and health at privatized facilities leased to the University of Chicago for the construction and operation of a Regional Biocontainment Laboratory at DOE's Government-Owned and Contractor-Operated (GOCO) Argonne National Laboratory.

Dated: March 28, 2005.
Jonathan L. Snare,
Acting Assistant Secretary of Labor for Occupational Safety and Health,
Department of Labor.

Dated: April 6, 2005.
C. Russell H. Shearer,
Principal Deputy Assistant Secretary for Environment, Safety and
Health, Department of Energy.
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