

## § 121.4

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(e) An attenuated strain of a VS select agent or toxin may be excluded from the requirements of this part based upon a determination that the attenuated strain does not pose a severe threat to animal health or to animal products.

(1) To apply for an exclusion, an individual or entity must submit a written request and supporting scientific information. A written decision granting or denying the request will be issued. An exclusion will be effective upon notification of the applicant. Exclusions will be published periodically in the notice section of the FEDERAL REGISTER and will be listed on the Internet at [http://www.aphis.usda.gov/programs/ag\\_selectagent/index.html](http://www.aphis.usda.gov/programs/ag_selectagent/index.html).

(2) If an excluded attenuated strain is subjected to any manipulation that restores or enhances its virulence, the resulting select agent or toxin will be subject to the requirements of this part.

(3) An individual or entity may make a written request to the Administrator for reconsideration of a decision denying an exclusion application. The written request for reconsideration must state the facts and reasoning upon which the individual or entity relies to show the decision was incorrect. The Administrator will grant or deny the request for reconsideration as promptly as circumstances allow and will state, in writing, the reasons for the decision.

(f) Any VS select agent or toxin seized by a Federal law enforcement agency will be excluded from the requirements of this part during the period between seizure of the agent or toxin and the transfer or destruction of such agent or toxin provided that:

(1) As soon as practicable, the Federal law enforcement agency transfers the seized agent or toxin to an entity eligible to receive such agent or toxin or destroys the agent or toxin by a recognized sterilization or inactivation process.

(2) The Federal law enforcement agency safeguards and secures the seized agent or toxin against theft, loss, or release, and reports any theft, loss, or release of such agent or toxin.

(3) The Federal law enforcement agency reports the seizure of the select agent or toxin to APHIS or CDC.

(i) The seizure of any of the following VS select agents and toxins must be reported within 24 hours by telephone, facsimile, or e-mail: African horse sickness virus, African swine fever virus, avian influenza virus (highly pathogenic), bovine spongiform encephalopathy agent, classical swine fever virus, foot-and-mouth disease virus, Newcastle disease virus (velogenic), rinderpest virus, and swine vesicular disease virus. This report must be followed by submission of APHIS/CDC Form 4 within 7 calendar days after seizure of the select agent or toxin.

(ii) For all other VS select agents or toxins, APHIS/CDC Form 4 must be submitted within 7 calendar days after seizure of the agent or toxin.

(iii) A copy of APHIS/CDC Form 4 must be maintained for 3 years.

(4) The Federal law enforcement agency reports the final disposition of the select agent or toxin by submission of APHIS/CDC Form 4. A copy of the completed form must be maintained for 3 years.

[70 FR 13284, Mar. 18, 2005, as amended at 73 FR 61331, Oct. 16, 2008]

### § 121.4 Overlap select agents and toxins.

(a) Except as provided in paragraphs (d) and (e) of this section, the Administrator has determined that the biological agents and toxins listed in this section have the potential to pose a severe threat to public health and safety, to animal health, or to animal products.

(b) Overlap select agents and toxins:

*Bacillus anthracis*;  
*Brucella abortus*;  
*Brucella melitensis*;  
*Brucella suis*;  
*Burkholderia mallei*;  
*Burkholderia pseudomallei*;  
Hendra virus;  
Nipah virus;  
Rift Valley fever virus;  
Venezuelan equine encephalitis virus.

(c) Genetic elements, recombinant nucleic acids, and recombinant organisms:

(1) Nucleic acids that can produce infectious forms of any of the overlap select agent viruses listed in paragraph (b) of this section.<sup>4</sup>

(2) Recombinant nucleic acids that encode for the functional forms of any overlap toxin listed in paragraph (b) of this section if the nucleic acids:

(i) Can be expressed *in vivo* or *in vitro*; or

(ii) Are in a vector or recombinant host genome and can be expressed *in vivo* or *in vitro*.

(3) Overlap select agents and toxins listed in paragraph (b) of this section that have been genetically modified.

(d) Overlap select agents or toxins that meet any of the following criteria are excluded from the requirements of this part:

(1) Any overlap select agent or toxin that is in its naturally occurring environment, provided that the agent or toxin has not been intentionally introduced, cultivated, collected, or otherwise extracted from its natural source.

(2) Nonviable overlap select agents or nonfunctional overlap toxins.<sup>5</sup>

(e) An attenuated strain of an overlap select agent or toxin may be excluded from the requirements of this part based upon a determination that the attenuated strain does not pose a severe threat to public health and safety, to animal health, or to animal products.

(1) To apply for an exclusion, an individual or entity must submit a written request and supporting scientific information. A written decision granting or denying the request will be issued. An exclusion will be effective upon notification of the applicant. Exclusions will be published periodically in the notice section of the FEDERAL REGISTER and will be listed on the Internet at [http://www.aphis.usda.gov/programs/ag\\_selectagent/index.html](http://www.aphis.usda.gov/programs/ag_selectagent/index.html).

(2) If an excluded attenuated strain is subjected to any manipulation that re-

stores or enhances its virulence, the resulting overlap select agent or toxin will be subject to the requirements of this part.

(3) An individual or entity may make a written request to the Administrator for reconsideration of a decision denying an exclusion application. The written request for reconsideration must state the facts and reasoning upon which the individual or entity relies to show the decision was incorrect. The Administrator will grant or deny the request for reconsideration as promptly as circumstances allow and will state, in writing, the reasons for the decision.

(f) Any overlap select agent or toxin seized by a Federal law enforcement agency will be excluded from the requirements of this part during the period between seizure of the agent or toxin and the transfer or destruction of such agent or toxin provided that:

(1) As soon as practicable, the Federal law enforcement agency transfers the seized agent or toxin to an entity eligible to receive such agent or toxin or destroys the agent or toxin by a recognized sterilization or inactivation process.

(2) The Federal law enforcement agency safeguards and secures the seized agent or toxin against theft, loss, or release, and reports any theft, loss, or release of such agent or toxin.

(3) The Federal law enforcement agency reports the seizure of the overlap select agent or toxin to APHIS or CDC.

(i) The seizure of any of the following overlap select agents and toxins must be reported within 24 hours by telephone, facsimile, or e-mail: *Bacillus anthracis*, *Brucella melitensis*, Hendra virus, Nipah virus, Rift Valley fever virus, and Venezuelan equine encephalitis virus. This report must be followed by submission of APHIS/CDC Form 4 within 7 calendar days after seizure of the overlap select agent or toxin.

(ii) For all other overlap select agents or toxins, APHIS/CDC Form 4 must be submitted within 7 calendar days after seizure of the agent or toxin.

(iii) A copy of APHIS/CDC Form 4 must be maintained for 3 years.

<sup>4</sup>The importation and interstate movement of overlap select agents or toxins listed in paragraphs (c)(1) through (c)(3) of this section may be subject to the permit requirements under part 122 of this subchapter.

<sup>5</sup>However, the importation and interstate movement of these nonviable overlap select agents may be subject to the permit requirements under part 122 of this subchapter.

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(4) The Federal law enforcement agency reports the final disposition of the overlap select agent or toxin by submission of APHIS/CDC Form 4. A copy of the completed form must be maintained for 3 years.

[70 FR 13284, Mar. 18, 2005, as amended at 73 FR 61331, Oct. 16, 2008]

### § 121.5 Exemptions for VS select agents and toxins.

(a) Diagnostic laboratories and other entities that possess, use, or transfer a VS select agent or toxin that is contained in a specimen presented for diagnosis or verification will be exempt from the requirements of this part for such agent or toxin contained in the specimen, provided that:

(1) Unless directed otherwise by the Administrator, within 7 calendar days after identification, the agent or toxin is transferred in accordance with § 121.16 or destroyed on-site by a recognized sterilization or inactivation process;

(2) The agent or toxin is secured against theft, loss, or release during the period between identification of the agent or toxin and transfer or destruction of such agent or toxin, and any theft, loss, or release of such agent or toxin is reported; and

(3) The identification of the agent or toxin is reported to APHIS or CDC.

(i) The identification of any of the following select agents and toxins must be immediately reported by telephone, facsimile, or e-mail: African horse sickness virus, African swine fever virus, avian influenza virus (highly pathogenic), bovine spongiform encephalopathy agent, classical swine fever virus, foot-and-mouth disease virus, virulent Newcastle disease virus, rinderpest virus, and swine vesicular disease virus. This report must be followed by submission of APHIS/CDC Form 4 within 7 calendar days after identification.

(ii) For all other VS select agents or toxins, APHIS/CDC Form 4 must be submitted within 7 calendar days after identification.

(iii) Less stringent reporting may be required during agricultural emergencies or outbreaks, or in endemic areas.

(iv) A copy of APHIS/CDC Form 4 must be maintained for 3 years.

(b) Diagnostic laboratories and other entities that possess, use, or transfer a VS select agent or toxin that is contained in a specimen presented for proficiency testing will be exempt from the requirements of this part for such agent or toxin contained in the specimen, provided that:

(1) Unless directed otherwise by the Administrator, within 90 calendar days of receipt, the agent or toxin is transferred in accordance with § 121.16 or destroyed on-site by a recognized sterilization or inactivation process;

(2) The agent or toxin is secured against theft, loss, or release during the period between identification of the agent or toxin and transfer or destruction of such agent or toxin, and any theft, loss, or release of such agent or toxin is reported; and

(3) The identification of the agent or toxin, and its derivative, is reported to APHIS or CDC. To report the identification of a select agent or toxin, APHIS/CDC Form 4 must be submitted within 90 days of receipt of the agent or toxin. A copy of the completed form must be maintained for 3 years.

(c) Diagnostic reagents and vaccines that are, bear, or contain VS select agents or toxins that are produced at USDA diagnostic facilities will be exempt from the requirements of this part.

(d) Unless the Administrator by order determines that additional regulation is necessary to protect animal health or animal products, products that are, bear, or contain VS select agents or toxins will be exempt from the requirements of this part if the products have been cleared, approved, licensed, or registered pursuant to:

(1) The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*);

(2) Section 351 of Public Health Service Act (42 U.S.C. 262);

(3) The Virus-Serum-Toxin Act (21 U.S.C. 151–159); or

(4) The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 131 *et seq.*).

(e) The Administrator may exempt from the requirements of this part an experimental product that is, bears, or contains a VS select agent or toxin if