

§ 118.3 Movement of detained biological products; Termination of detention.

Except as provided in paragraphs (a) and (b) of this section, no biological product detained in accordance with the provisions in this part shall be moved by any person from the place at which such product is located when it is detained.

(a) A detained biological product may be moved from the place at which it is located when so detained for the purpose of providing proper storage conditions if such movement has been approved by an authorized representative of the Administrator; *Provided*, That, the biological product so moved shall be detained by an authorized representative of the Administrator after such movement.

(b) A detained biological product may be moved from the place at which it is detained on written notification by an authorized representative of the Administrator that the detention is terminated; *Provided*, That, the conditions under which the detained biological product may be moved will be specified in the written notification of the termination. The notification of termination shall be served by either personally delivering the notification, or by certifying and mailing the notification addressed to such person at the last known residence or principal office or place of business of the owner, agent, or other person having custody of the biological product.

[52 FR 30135, Aug. 13, 1987, as amended at 56 FR 66784, Dec. 26, 1991]

§ 118.4 Seizure and condemnation.

Any biological product which is prepared, sold, bartered, exchanged, or shipped in violation of the Act or regulations shall be liable to be proceeded against and seized and condemned, at any time, on a libel of information in any United States district court or other proper court within the jurisdiction of which the product is found. If the product is condemned, it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct, and the proceeds, if sold, less the court costs and fees, and storage and other proper expenses, shall be paid into the Treasury of the United

States, but the product shall not be sold contrary to the provisions of the Act or the laws of the jurisdiction in which it is sold; *Provided*, That, upon the execution and delivery of a good and sufficient bond conditioned that the product shall not be sold or otherwise disposed of contrary to the provisions of the Act or the laws or jurisdiction in which disposal is made, the court may direct that such product be delivered to the owner thereof subject to such supervision by authorized representatives of the Administrator as is necessary to ensure compliance with the applicable laws. When a decree of condemnation is entered against the product and it is released under bond, or destroyed, court costs and fees, and storage and other proper expenses shall be awarded against the person, if any, intervening as claimant of the product. The proceedings in such libel cases shall conform, as nearly as may be practicable, to the proceedings in admiralty, except that either party may demand trial by jury of any issue of fact joined in any case, and all such proceedings shall be at the suit of and in the name of the United States.

[52 FR 30135, Aug. 13, 1987, as amended at 56 FR 66784, Dec. 26, 1991]

PART 121—POSSESSION, USE, AND TRANSFER OF SELECT AGENTS AND TOXINS

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AUTHORITY: 7 U.S.C. 8401; 7 CFR 2.22, 2.80, and 371.4.

SOURCE: 70 FR 13284, Mar. 18, 2005, unless otherwise noted.

§ 121.1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

Attorney General. The Attorney General of the United States or any person authorized to act for the Attorney General.

Biological agent. Any microorganism (including, but not limited to, bacteria, viruses, fungi, or protozoa), or infectious substance, or any naturally occurring, bioengineered, or synthesized component of any such microorganism or infectious substance, capable of causing:

(1) Death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(2) Deterioration of food, water, equipment, supplies, or material of any kind; or

(3) Deleterious alteration of the environment.

Centers for Disease Control and Prevention (CDC). The Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

Diagnosis. The analysis of specimens for the purpose of identifying or confirming the presence or characteristics of a select agent or toxin, provided that such analysis is directly related to protecting the public health or safety, animal health or animal products, or plant health or plant products.

Entity. Any government agency (Federal, State, or local), academic institution, corporation, company, partnership, society, association, firm, sole proprietorship, or other legal entity.

HHS Secretary. The Secretary of the Department of Health and Human Services or his or her designee, unless otherwise specified.

HHS select agent and/or toxin. A biological agent or toxin listed in 42 CFR 73.3.

Import. To move into, or the act of movement into, the territorial limits of the United States.

Information security. Protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide:

(1) *Integrity*, which means guarding against improper information modification or destruction, and includes ensuring information authenticity;

(2) *Confidentiality*, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information; and

(3) *Availability*, which means ensuring timely and reliable access to and use of information.

Interstate. From one State into or through any other State, or within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

Occupational exposure. Any reasonably anticipated skin, eye, mucous membrane, parenteral contact, or respiratory aerosol exposure to select agents or toxins that may result from the performance of an employee's duties.

Overlap select agent and/or toxin. A biological agent or toxin that is listed in § 121.4 and 42 CFR 73.4.

Permit. A written authorization by the Administrator to import or move interstate select agents or toxins, under conditions prescribed by the Administrator.

Principal investigator. The one individual who is designated by the entity to direct a project or program and who is responsible to the entity for the scientific and technical direction of that project or program.

Proficiency testing. The process of determining the competency of an individual or laboratory to perform a specified test or procedure.

Recombinant nucleic acids. (1) Molecules that are constructed by joining nucleic acid molecules and that can replicate in a living cell; or

(2) Molecules that result from the replication of those described in paragraph (1) of this definition.

Responsible official. The individual designated by an entity with the authority and control to ensure compliance with the regulations in this part.

Security barrier. A physical structure that is designed to prevent entry by unauthorized persons.

Select agent and/or toxin. Unless otherwise specified, all of the biological agents or toxins listed in §§121.3 and 121.4.

Specimen. Samples of material from humans, animals, plants, or the environment, or isolates or cultures from such samples, for diagnosis, verification, or proficiency testing.

State. Any of the several States of the United States, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

Synthetic nucleic acids. (1) Molecules that are chemically or by other means synthesized or amplified, including those that are chemically or otherwise modified but can base pair with naturally occurring nucleic acid molecules (*i.e.*, synthetic nucleic acids); or

(2) Molecules that result from the replication of those described in paragraph (1) of this definition.

Toxin. The toxic material or product of plants, animals, microorganisms (including, but not limited to, bacteria, viruses, fungi, or protozoa), or infectious substances, or a recombinant or synthesized molecule, whatever their origin and method of production, and includes:

(1) Any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or

(2) Any poisonous isomer or biological product, homolog, or derivative of such a substance.

United States. All of the States.

USDA. The U.S. Department of Agriculture.

Validated inactivation procedure. A procedure, whose efficacy is confirmed by data generated from a viability testing protocol, to render a select agent

non-viable but allows the select agent to retain characteristics of interest for future use; or to render any nucleic acids that can produce infectious forms of any select agent virus non-infectious for future use.

Verification. The demonstration of obtaining established performance (e.g., accuracy, precision, and the analytical sensitivity and specificity) specifications for any procedure used for diagnosis.

Viability testing protocol. A protocol to confirm the validated inactivation procedure by demonstrating the material is free of all viable select agent.

VS. The Veterinary Services Programs of the Animal and Plant Health Inspection Service.

VS select agent and/or toxin. A biological agent or toxin listed in §121.3.

[70 FR 13284, Mar. 18, 2005, as amended at 77 FR 61077, Oct. 5, 2012; 82 FR 6206, Jan. 19, 2017]

§ 121.2 Purpose and scope.

This part implements the provisions of the Agricultural Bioterrorism Protection Act of 2002 setting forth the requirements for possession, use, and transfer of select agents and toxins. The biological agents and toxins listed in this part have the potential to pose a severe threat to public health and safety, to animal health, or to animal products. Overlap select agents and toxins are subject to regulation by both APHIS and CDC.

§ 121.3 VS 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 animal health or to animal products. The select agents and toxins marked with an asterisk (*) are designated as Tier 1 select agents and toxins and are subject to additional requirements as listed in this part.

(b) VS select agents and toxins: African horse sickness virus; African swine fever virus; Avian influenza virus; Classical swine fever virus; *Foot-and-mouth disease virus; Goat pox virus; Lumpy skin disease virus; *Mycoplasma*

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capricolum; *Mycoplasma mycoides*; Newcastle disease virus;¹ Peste des petits ruminants virus; *Rinderpest virus; Sheep pox virus; Swine vesicular disease virus.

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

(1) Nucleic acids that can produce infectious forms of any of the select agent viruses listed in paragraph (b) of this section.²

(2) Recombinant and/or synthetic nucleic acids that encode for the functional forms of any 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) VS select agents and toxins listed in paragraph (b) of this section that have been genetically modified.

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

(1) Any VS 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 VS select agents or nontoxic VS toxins.³

(3) A select agent or toxin that has been subjected to decontamination or a destruction procedure when intended for waste disposal.

¹A virulent Newcastle disease virus (avian paramyxovirus serotype 1) has an intracerebral pathogenicity index in day-old chicks (*Gallus gallus*) of 0.7 or greater or has an amino acid sequence at the fusion (F) protein cleavage site that is consistent with virulent strains of Newcastle disease virus. A failure to detect a cleavage site that is consistent with virulent strains does not confirm the absence of a virulent virus.

²The importation and interstate movement of VS 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.

³However, the importation and interstate movement of these nonviable select agents may be subject to the permit requirements under part 122 of this subchapter.

(4) A select agent or regulated nucleic acids that can produce infectious forms of any select agent virus that has been subjected to a validated inactivation procedure that is confirmed through a viability testing protocol. Surrogate strains that are known to possess equivalent properties with respect to inactivation can be used to validate an inactivation procedure; however, if there are known strain-to-strain variations in the resistance of a select agent to an inactivation procedure, then an inactivation procedure validated on a lesser resistant strain must also be validated on the more resistant strains.

(5) Material containing a select agent that is subjected to a procedure that removes all viable select agent cells, spores, or virus particles if the material is subjected to a viability testing protocol to ensure that the removal method has rendered the material free of all viable select agent.

(6) A select agent or regulated nucleic acids that can produce infectious forms of any select agent virus not subjected to a validated inactivation procedure or material containing a select agent not subjected to a procedure that removes all viable select agent cells, spores, or virus particles if the material is determined by the Administrator to be effectively inactivated or effectively removed. To apply for a determination an individual or entity must submit a written request and supporting scientific information to APHIS. A written decision granting or denying the request will be issued.

(7) A VS select toxin identified in an original food sample or clinical sample.

(8) Waste generated during the delivery of patient care by health care professionals from a patient diagnosed with an illness or condition associated with a select agent, where that waste is decontaminated or transferred for destruction by complying with State and Federal regulations within 7 calendar days of the conclusion of patient care.

(9) Any low pathogenic strains of avian influenza virus, avian paramyxovirus serotype-1 (APMV-1) viruses which do not meet the criteria

for Newcastle disease virus,⁴ including those identified as pigeon paramyxovirus-12⁵ isolated from a non-poultry species, all subspecies *Mycoplasma capricolum* except subspecies *capripneumoniae* (contagious caprine pleuropneumonia), and all subspecies *Mycoplasma mycoides* except subspecies *mycoides* small colony (*Mmm* SC) (contagious bovine pleuropneumonia), provided that the individual or entity can identify that the agent is within the exclusion category.

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

(1) To apply for 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 to the applicant. Exclusions will be listed on the National Select Agent Registry Web site at <http://www.selectagents.gov/>.

(2) If an excluded attenuated strain or modified toxin is subjected to any manipulation that restores or enhances its virulence or toxic activity, 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 application for the exclusion of

an attenuated strain of a select agent or a select toxin modified to be less potent or toxic. 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, 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 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

⁴An APMV-1 virus isolated from poultry which has an intracerebral pathogenicity index in day-old chicks (*Gallus gallus*) of 0.7 or greater or has an amino acid sequence at the fusion (F) protein cleavage site that is consistent with virulent strains of Newcastle disease virus. A failure to detect a cleavage site that is consistent with virulent strains does not confirm the absence of a virulent virus.

⁵Pigeon paramyxovirus (PPMV-1) is a species-adapted APMV-1 virus which is endemic in pigeons and doves in the United States and can be identified through monoclonal antibody testing and demonstration of their characteristic amino acid signature at the fusion gene cleavage site.

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completed form must be maintained for 3 years.

[70 FR 13284, Mar. 18, 2005, as amended at 73 FR 61331, Oct. 16, 2008; 77 FR 61077, Oct. 5, 2012; 79 FR 26830, May 12, 2014; 82 FR 6207, Jan. 19, 2017]

§ 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. The select agents and toxins marked with an asterisk (*) are designated as Tier 1 select agents and toxins and are subject to additional requirements as listed in this part.

(b) Overlap select agents and toxins: **Bacillus anthracis*; *Bacillus anthracis* (Pasteur strain); *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 and/or synthetic nucleic acids, and recombinant and/or synthetic organisms:

(1) Nucleic acids that can produce infectious forms of any of the overlap select agent viruses listed in paragraph (b) of this section.⁶

(2) Recombinant and/or synthetic nucleic acids that encode for the toxic 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:

⁶The 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.

(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 nontoxic overlap toxins.⁷

(3) A select agent or toxin that has been subjected to decontamination or a destruction procedure when intended for waste disposal.

(4) A select agent or regulated nucleic acids that can produce infectious forms of any select agent virus that has been subjected to a validated inactivation procedure that is confirmed through a viability testing protocol. Surrogate strains that are known to possess equivalent properties with respect to inactivation can be used to validate an inactivation procedure; however, if there are known strain-to-strain variations in the resistance of a select agent to an inactivation procedure, then an inactivation procedure validated on a lesser resistant strain must also be validated on the more resistant strains.

(5) Material containing a select agent that is subjected to a procedure that removes all viable select agent cells, spores, or virus particles if the material is subjected to a viability testing protocol to ensure that the removal method has rendered the material free of all viable select agent.

(6) A select agent or regulated nucleic acids that can produce infectious forms of any select agent virus not subjected to a validated inactivation procedure or material containing a select agent not subjected to a procedure that removes all viable select agent cells, spores, or virus particles if the material is determined by the Administrator or HHS Secretary to be effectively inactivated or effectively removed. To apply for a determination an individual or entity must submit a written request and supporting scientific information to APHIS or CDC. A written decision granting or denying the request will be issued.

⁷However, the importation and interstate movement of these nonviable overlap select agents may be subject to the permit requirements under part 122 of this subchapter.

(7) An overlap select toxin identified in an original food sample or clinical sample.

(8) Waste generated during the delivery of patient care by health care professionals from a patient diagnosed with an illness or condition associated with a select agent, where that waste is decontaminated or transferred for destruction by complying with State and Federal regulations within 7 calendar days of the conclusion of patient care.

(9) Any subtypes of Venezuelan equine encephalitis virus except for Subtypes IAB or IC, provided that the individual or entity can identify that the agent is within the exclusion category.

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

(1) To apply for 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 to the applicant. Exclusions will be listed on the National Select Agent Registry Web site at <http://www.selectagents.gov/>.

(2) If an excluded attenuated strain or modified toxin is subjected to any manipulation that restores or enhances its virulence or toxic activity, 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 or HHS Secretary for reconsideration of a decision denying an application for the exclusion of an attenuated strain of a select agent or a select toxin modified to be less potent or toxic. 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 or HHS Secretary will grant or deny the request for reconsideration as promptly as cir-

cumstances 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*, *Burkholderia mallei*, or *Burkholderia pseudomallei*. 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.

(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; 77 FR 61078, Oct. 5, 2012; 79 FR 26830, May 12, 2014; 82 FR 6207, Jan. 19, 2017]

§ 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

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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 of the select agent or toxin, the select 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;

(3) Unless otherwise directed by the Administrator, the clinical or diagnostic specimens collected from a patient infected with a select agent are transferred in accordance with §121.16 or destroyed on-site by a recognized sterilization or inactivation process within 7 calendar days after delivery of patient care by health care professionals has concluded; and

(4) The identification of the agent or toxin is reported to APHIS or CDC, the specimen provider, and to other appropriate authorities when required by Federal, State, or local law by telephone, facsimile, or email. This report must be followed by submission of APHIS/CDC Form 4 to APHIS or CDC within 7 calendar days after identification.

(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 such product is being used in an investigation authorized by any Federal law and the Administrator determines that additional regulation under this part is not necessary to protect animal health or animal products. To apply for an exemption, an individual or entity must submit APHIS/CDC Form 5. A written decision granting or denying the exemption will be issued. The applicant must notify APHIS when an authorization for an investigation no longer exists. This exemption automatically terminates when such authorization is no longer in effect.

(f) In addition to the exemptions provided in paragraphs (a) through (e) of this section, the Administrator may grant a specific exemption upon a showing of good cause and upon his or her determination that such exemption is consistent with protecting animal

health or animal products. An individual or entity may request in writing an exemption from the requirements of this part. If granted, such exemptions are valid for a maximum of 3 years; thereafter, an individual or entity must request a new exemption. If a request for exemption is denied, an individual or entity may request reconsideration in writing to the Administrator. The request for reconsideration must state all of the facts and reasons upon which the individual or entity relies to show that the exemption was wrongfully denied. 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.

[70 FR 13284, Mar. 18, 2005, as amended at 73 FR 61331, Oct. 16, 2008; 77 FR 61078, Oct. 5, 2012; 79 FR 26831, May 12, 2014; 82 FR 6208, Jan. 19, 2017]

§ 121.6 Exemptions for overlap select agents and toxins.

(a) Clinical or diagnostic laboratories and other entities that possess, use, or transfer an overlap 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 of the select agent or toxin, the select 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;

(3) Unless otherwise directed by the Administrator or HHS Secretary, the clinical or diagnostic specimens collected from a patient infected with a select agent are transferred in accordance with § 121.16 or destroyed on-site by a recognized sterilization or inactivation process within 7 calendar days after delivery of patient care by health care professionals has concluded; and

(4) The identification of the agent or toxin is reported to APHIS or CDC, the specimen provider, and to other appropriate authorities when required by Federal, State, or local law by telephone, facsimile, or email. This report must be followed by submission of APHIS/CDC Form 4 to APHIS or CDC within 7 calendar days after identification.

(b) Clinical or diagnostic laboratories and other entities that possess, use, or transfer an overlap 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 or the HHS Secretary, within 90 days of receipt, the agent or toxin is transferred in accordance with § 121.16 or 42 CFR 73.16 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 an overlap select agent or toxin, APHIS/CDC Form 4 must be submitted within 90 calendar days of receipt of the agent or toxin. A copy of the completed form must be maintained for 3 years.

(c) Unless the Administrator by order determines that additional regulation of a specific product is necessary to protect animal health or animal products, products that are, bear, or contain overlap 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

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

(d) After consultation with the HHS Secretary, the Administrator may exempt from the requirements of this part an investigational product that is, bears, or contains an overlap select agent or toxin if such product is being used in an investigation authorized by any Federal law and the Administrator determines that additional regulation under this part is not necessary to protect animal health or animal products.

(1) To apply for an exemption, an individual or entity must submit APHIS/CDC Form 5.

(2) The Administrator will make a determination regarding an exemption within 14 calendar days after receipt of the application and notification that the investigation has been authorized under a Federal law. A written decision granting or denying the exemption will be issued.

(3) The applicant must notify APHIS or CDC when an authorization for an investigation no longer exists. This exemption automatically terminates when such authorization is no longer in effect.

(e) If it is necessary to respond to a domestic or foreign agricultural emergency involving an overlap select agent or toxin, the Administrator may exempt an individual or entity from the requirements, in whole or in part, of this part for up to 30 calendar days. The Administrator may extend the exemption once for an additional 30 days.

(f) Upon request of the Secretary of Health and Human Services, the Administrator may exempt an individual or entity from the requirements, in whole or in part, of this part for up to 30 calendar days if the Secretary of Health and Human Services has granted an exemption for a public health emergency involving an overlap select agent or toxin. The Administrator may extend the exemption once for an additional 30 days.

[70 FR 13284, Mar. 18, 2005, as amended at 73 FR 61331, Oct. 16, 2008; 77 FR 61078, Oct. 5, 2012; 79 FR 26831, May 12, 2014; 82 FR 6208, Jan. 19, 2017]

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§ 121.7 Registration and related security risk assessments.

(a) Unless exempted under § 121.5, an individual or entity shall not possess, use, or transfer any VS select agent or toxin without a certificate of registration issued by the Administrator. Unless exempted under § 121.6 or 42 CFR 73.6, an individual or entity shall not possess, use, or transfer any overlap select agent or toxin without a certificate of registration issued by the Administrator and the HHS Secretary.

(b) As a condition of registration, each entity is required to be in compliance with the requirements of this part for select agents and toxins listed on the registration regardless of whether the entity is in actual possession of the select agent or toxin. With regard to toxins, the entity registered for possession, use, or transfer of a toxin must be in compliance with the requirements of this part regardless of the amount of toxins currently in its possession.

(c) As a condition of registration, each entity must designate an individual to be its responsible official. While most registrants are likely to be entities, in the event that an individual applies for and is granted a certificate of registration, the individual will be considered the responsible official.

(d)(1) As a condition of registration, the following must be approved by the Administrator or the HHS Secretary based on a security risk assessment by the Attorney General:

(i) The individual or entity;

(ii) The responsible official; and

(iii) Unless otherwise exempted under this section, any individual who owns or controls the entity.

(2) Federal, State, or local governmental agencies, including public accredited academic institutions, are exempt from the security risk assessments for the entity and the individual who owns or controls such entity.

(3) An individual will be deemed to own or control an entity under the following conditions:⁸

(i) For a private institution of higher education, an individual will be deemed

⁸These conditions may apply to more than one individual.

to own or control the entity if the individual is in a managerial or executive capacity with regard to the entity's select agents or toxins or with regard to the individuals with access to the select agents or toxins possessed, used, or transferred by the entity.

(ii) For entities other than institutions of higher education, an individual will be deemed to own or control the entity if the individual:

(A) Owns 50 percent or more of the entity, or is a holder or owner of 50 percent or more of its voting stock; or

(B) Is in a managerial or executive capacity with regard to the entity's select agents or toxins or with regard to the individuals with access to the select agents or toxins possessed, used, or transferred by the entity.

(4) An entity will be considered to be an institution of higher education if it is an institution of higher education as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)), or is an organization described in 501(c)(3) of the Internal Revenue Code of 1986, as amended (26 U.S.C. 501(c)(3)).

(5) To obtain a security risk assessment, an individual or entity must submit the information necessary to conduct a security risk assessment to the Attorney General.

(e) To apply for a certificate of registration for only VS select agents or toxins, or for VS and PPQ select agents or toxins, an individual or entity must submit the information requested in the registration application package (APHIS/CDC Form 1) to APHIS. To apply for a certificate of registration for overlap select agents or toxins, overlap select agents or toxins and any combination of PPQ or VS select agents or toxins, or HHS select agents or toxins and any combination of PPQ or VS select agents or toxins, an individual or entity must submit the information requested in the registration application package (APHIS/CDC Form 1) to APHIS or CDC, but not both.

(f) Prior to the issuance of a certificate of registration, the responsible official must promptly provide notification of any changes to the application for registration by submitting the relevant page(s) of the registration application.

(g) The issuance of a certificate of registration may be contingent upon inspection or submission of additional information, such as the security plan, biosafety plan, incident response plan, or any other documents required to be prepared under this part.

(h) A certificate of registration will be valid for one physical location (a room, a building, or a group of buildings) where the responsible official will be able to perform the responsibilities required in this part, for specific select agents or toxins, and for specific activities.

(i) A certificate of registration may be amended to reflect changes in circumstances (e.g., replacement of the responsible official or other personnel changes, changes in ownership or control of the entity, changes in the activities involving any select agents or toxins, or the addition or removal of select agents or toxins).

(1) Prior to any change, the responsible official must apply for an amendment to a certificate of registration by submitting the relevant page(s) of the registration application.⁹

(2) The responsible official will be notified in writing if an application to amend a certificate of registration has been approved. Approval of an amendment may be contingent upon an inspection or submission of additional information, such as the security plan, biosafety plan, incident response plan, or any other documents required to be prepared under this part.

(3) No change may be made without such approval.

(j) An entity must immediately notify APHIS or CDC if it loses the services of its responsible official. In the event that an entity loses the services of its responsible official, an entity may continue to possess or use select agents or toxins only if it appoints as the responsible official another individual who has been approved by the Administrator or the HHS Secretary following a security risk assessment by

⁹Depending on the change, a security risk assessment by the Attorney General may also be required (e.g., replacement of the responsible official, changes in ownership or control of the entity, new researchers or graduate students, etc.)

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the Attorney General and who meets the requirements of this part.

(k) A certificate of registration will be terminated upon the written request of the entity if the entity no longer possesses or uses any select agents or toxins and no longer wishes to be registered.

(l) A certificate of registration will be valid for a maximum of 3 years.

[70 FR 13284, Mar. 18, 2005, as amended at 73 FR 61331, Oct. 16, 2008; 82 FR 6208, Jan. 19, 2017]

§ 121.8 Denial, revocation, or suspension of registration.

(a) An application may be denied or a certificate of registration revoked or suspended if:

(1) The individual or entity, the responsible official, or an individual who owns or controls the entity is within any of the categories described in 18 U.S.C. 175b;

(2) The individual or entity, the responsible official, or an individual who owns or controls the entity is reasonably suspected by any Federal law enforcement or intelligence agency of:

(i) Committing a crime set forth in 18 U.S.C. 2332b(g)(5); or

(ii) Knowing involvement with an organization that engages in domestic or international terrorism (as defined in 18 U.S.C. 2331) or with any other organization that engages in intentional crimes of violence; or

(iii) Being an agent of a foreign power as defined in 50 U.S.C. 1801;

(3) The individual or entity does not meet the requirements of this part;¹⁰ or

(4) It is determined that such action is necessary to protect animal health or animal products.

(b) Upon revocation or suspension of a certificate of registration, the individual or entity must:

(1) Immediately stop all use of each select agent or toxin covered by the revocation or suspension order;

(2) Immediately safeguard and secure each select agent or toxin covered by the revocation or suspension order from theft, loss, or release; and

(3) Comply with all disposition instructions issued by the Administrator for each select agent or toxin covered by the revocation or suspension.

(c) Denial of an application for registration and revocation of registration may be appealed under §121.20. However, any denial of an application for registration or revocation of a certificate of registration will remain in effect until a final agency decision has been rendered.

[70 FR 13284, Mar. 18, 2005, as amended at 73 FR 61331, Oct. 16, 2008; 82 FR 6208, Jan. 19, 2017]

§ 121.9 Responsible official.

(a) An individual or entity required to register under this part must designate an individual to be the responsible official. The responsible official must:

(1) Be approved by the Administrator or the HHS Secretary following a security risk assessment by the Attorney General.

(2) Be familiar with the requirements of this part.

(3) Have authority and responsibility to act on behalf of the entity.

(4) Ensure compliance with the requirements of this part.

(5) Have a physical (and not merely a telephonic or audio/visual) presence at the registered entity to ensure that the entity is in compliance with the select agent regulations and be able to respond in a timely manner to onsite incidents involving select agents and toxins in accordance with the entity's incident response plan.

(6) Ensure that annual inspections are conducted for each registered space where select agents or toxins are stored or used in order to determine compliance with the requirements of this part. The results of each inspection must be documented, and any deficiencies identified during an inspection must be corrected and the corrections documented.

(7) Ensure that individuals are provided the contact information for the USDA Office of Inspector General Hotline and the HHS Office of Inspector General Hotline so that they may anonymously report any biosafety/biocontainment or security concerns related to select agents and toxins.

¹⁰If registration is denied for this reason, we may provide technical assistance and guidance.

(8) Investigate to determine the reason for any failure of a validated inactivation procedure or any failure to remove viable select agent from material. If the responsible official is unable to determine the cause of a deviation from a validated inactivation procedure or a viable select agent removal method; or receives any report of any inactivation failure after the movement of material to another location, the responsible official must report immediately by telephone or email the inactivation or viable agent removal method failure to APHIS or CDC.

(9) Review, and revise as necessary, each of the entity's validated inactivation procedures or viable select agent removal methods. The review must be conducted annually or after any change in principal investigator, change in the validated inactivation procedure or viable select agent removal method, or failure of the validated inactivation procedure or viable select agent removal method. The review must be documented and training must be conducted if there are any changes to the validated inactivation procedure, viable select agent removal method, or viability testing protocol.

(b) An entity may designate one or more individuals to serve as an alternate responsible official who acts for the responsible official in his/her absence. These individuals must have the authority and control to ensure compliance with the regulations when acting as the responsible official.

(c) The responsible official must report the identification and final disposition of any select agent or toxin contained in a specimen presented for diagnosis or verification.

(1) The identification of any of the following select agents or toxins must be immediately reported by telephone, facsimile, or email: African horse sickness virus, African swine fever virus, avian influenza virus (highly pathogenic), *Bacillus anthracis*, *Burkholderia mallei*, *Burkholderia pseudomallei*, classical swine fever virus, foot-and-mouth disease virus, virulent Newcastle disease virus, rinderpest virus, or swine vesicular disease virus. The final disposition of the agent or toxin must be reported by submission of APHIS/CDC Form 4 within 7 calendar days after

identification. A copy of the completed form must be maintained for 3 years.

(2) To report the identification and final disposition of any other select agent or toxin, APHIS/CDC Form 4 must be submitted within 7 calendar days after identification. A copy of the completed form must be maintained for 3 years.

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

(d) The responsible official must report the identification and final disposition of any select agent or toxin contained in a specimen presented for proficiency testing. To report the identification and final disposition of a select agent or toxin, APHIS/CDC Form 4 must be submitted within 90 calendar days of receipt of the agent or toxin. A copy of the completed form must be maintained for 3 years.

[70 FR 13284, Mar. 18, 2005, as amended at 73 FR 61332, Oct. 16, 2008; 77 FR 61078, Oct. 5, 2012; 79 FR 26831, May 12, 2014; 82 FR 6208, Jan. 19, 2017]

§ 121.10 Restricting access to select agents and toxins; security risk assessments.

(a) An individual or entity required to register under this part may not provide an individual access to a select agent or toxin, and an individual may not access a select agent or toxin, unless the individual is approved by the Administrator or the HHS Secretary following a security risk assessment by the Attorney General.

(b) An individual will be deemed to have access at any point in time if the individual has possession of a select agent or toxin (e.g., carries, uses, or manipulates) or the ability to gain possession of a select agent or toxin.

(c) Each individual with access to select agents or toxins must have the appropriate education, training, and/or experience to handle or use such agents or toxins.

(d) To apply for access approval, each individual must submit the information necessary to conduct a security risk assessment to the Attorney General.

(e) A person with valid approval from the HHS Secretary or Administrator to

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have access to select agents or toxins may request, through his or her Responsible Official, that the HHS Secretary or Administrator provide their approved access status to another registered individual or entity for a specified period of time. A responsible official must immediately notify the responsible official of the visited entity if the person's access to select agents and toxins has been terminated.

(f) An individual's security risk assessment may be expedited upon written request by the responsible official and a showing of good cause (e.g., public health or agricultural emergencies, national security, or a short-term visit by a prominent researcher). A written decision granting or denying the request will be issued.

(g) An individual's access approval for VS select agents or toxins may be denied, limited, or revoked if:

(1) The individual is within any of the categories described in 18 U.S.C. 175b;

(2) The individual is reasonably suspected by any Federal law enforcement or intelligence agency of committing a crime set forth in 18 U.S.C. 2332b(g)(5); knowing involvement with an organization that engages in domestic or international terrorism (as defined in 18 U.S.C. 2331) or with any other organization that engages in intentional crimes of violence; or being an agent of a foreign power as defined in 50 U.S.C. 1801; or

(3) It is determined that such action is necessary to protect animal health or animal products.

(h) For overlap select agents or toxins, an individual's access approval will be denied or revoked if the individual is within any of the categories described in 18 U.S.C. 175b. An individual's access approval may be denied, limited, or revoked for the reasons set forth in paragraphs (f)(2) through (f)(3) of this section.

(i) An individual may appeal the Administrator's decision to deny, limit, or revoke access approval under § 121.20.

(j) Access approval is valid for a maximum of 3 years.

(k) The responsible official must immediately notify APHIS or CDC when an individual's access to select agents

or toxins is terminated by the entity and the reasons therefore.

[70 FR 13284, Mar. 18, 2005, as amended at 77 FR 61079, Oct. 5, 2012; 82 FR 6209, Jan. 19, 2017]

§ 121.11 Security.

(a) An individual or entity required to register under this part must develop and implement a written security plan. The security plan must be sufficient to safeguard the select agent or toxin against unauthorized access, theft, loss, or release.

(b) The security plan must be designed according to a site-specific risk assessment and must provide graded protection in accordance with the risk of the select agent or toxin, given its intended use. A current security plan must be submitted for initial registration, renewal of registration, or when requested.

(c) The security plan must:

(1) Describe procedures for physical security, inventory control, and information systems control;

(2) Contain provisions for the control of access to select agents and toxins, including the safeguarding of animals (including arthropods) or plants intentionally or accidentally exposed to or infected with a select agent, against unauthorized access, theft, loss or release.

(3) Contain provisions for routine cleaning, maintenance, and repairs;

(4) Establish procedures for removing unauthorized or suspicious persons;

(5) Describe procedures for addressing loss or compromise of keys, keycards, passwords, combinations, etc. and protocols for changing access permissions or locks following staff changes;

(6) Contain procedures for reporting unauthorized or suspicious persons or activities, loss or theft of select agents or toxins, release of select agents or toxins, or alteration of inventory records;

(7) Contain provisions for ensuring that all individuals with access approval from the Administrator or the HHS Secretary understand and comply with the security procedures.

(8) Describe procedures for how the responsible official will be informed of suspicious activity that may be criminal in nature and related to the entity,

its personnel, or its select agents or toxins; and describe procedures for how the entity will notify the appropriate Federal, State, or local law enforcement agencies of such activity.

(9) Contain provisions for information security that:

(i) Ensure that all external connections to systems which manage security for the registered space are isolated or have controls that permit only authorized and authenticated users;

(ii) Ensure that authorized and authenticated users are only granted access to select agent and toxin related information, files, equipment (e.g., servers or mass storage devices), and applications as necessary to fulfill their roles and responsibilities, and that access is modified when the user's roles and responsibilities change or when their access to select agents and toxins is suspended or revoked;

(iii) Ensure that controls are in place that are designed to prevent malicious code (such as, but not limited to, computer viruses, worms, spyware) from compromising the confidentiality, integrity, or availability of information systems which manage access to spaces registered under this part or records as specified in §121.17;

(iv) Establish a robust configuration management practice for information systems to include regular patching and updates made to operating systems and individual applications; and

(v) Establish procedures that provide backup security measures in the event that access control systems, surveillance devices, and/or systems that manage the requirements of §121.17 are rendered inoperable.

(10) Contain provisions and policies for shipping, receiving, and storage of select agents and toxins, including documented procedures for receiving, monitoring, and shipping of all select agents and toxins. These provisions must provide that an entity will properly secure containers on site and have a written contingency plan for unexpected shipments.

(d) An individual or entity must adhere to the following security requirements or implement measures to achieve an equivalent or greater level of security:

(1) Allow access only to individuals with access approval from the Administrator or the HHS Secretary;

(2) Allow individuals not approved for access by the Administrator or the HHS Secretary to conduct routine cleaning, maintenance, repairs, and other activities not related to select agents or toxins only when continuously escorted by an approved individual if the potential to access to select agents or toxins exists;

(3) Provide for the control of select agents and toxins by requiring freezers, refrigerators, cabinets, and other containers where select agents or toxins are stored to be secured against unauthorized access (e.g., card access system, lock boxes);

(4) Inspect all suspicious packages before they are brought into or removed from an area where select agents or toxins are used or stored;

(5) Establish a protocol for intra-entity transfers under the supervision of an individual with access approval from the Administrator or the HHS Secretary, including chain-of-custody documents and provisions for safeguarding against theft, loss, or release; and

(6) Require that individuals with access approval from the Administrator or the HHS Secretary refrain from sharing with any other person their unique means of accessing a select agent or toxin (e.g., keycards or passwords);

(7) Require that individuals with access approval from the Administrator or the HHS Secretary immediately report any of the following to the responsible official:

(i) Any loss or compromise of keys, passwords, combinations, etc.;

(ii) Any suspicious persons or activities;

(iii) Any loss or theft of select agents or toxins;

(iv) Any release of a select agent or toxin;

(v) Any sign that inventory or use records for select agents or toxins have been altered or otherwise compromised; and

(vi) Any loss of computer, hard drive or other data storage device containing information that could be used to gain access to select agents or toxins; and

(8) Separate areas where select agents and toxins are stored or used from the public areas of the building.

(e) Entities must conduct complete inventory audits of all affected select agents and toxins in long-term storage when any of the following occur:

(1) Upon the physical relocation of a collection or inventory of select agents or toxins for those select agents or toxins in the collection or inventory;

(2) Upon the departure or arrival of a principal investigator for those select agents and toxins under the control of that principal investigator; or

(3) In the event of a theft or loss of a select agent or toxin, all select agents and toxins under the control of that principal investigator.

(f) In addition to the requirements contained in paragraphs (c) and (d) of this section, the security plan for an individual or entity possessing a Tier 1 select agent or toxin must also:

(1) Describe procedures for conducting a pre-access suitability assessment of persons who will have access to a Tier 1 select agent or toxin;

(2) Describe procedures for how an entity's responsible official will coordinate their efforts with the entity's safety and security professionals to ensure security of Tier 1 select agents and toxins and share, as appropriate, relevant information; and

(3) Describe procedures for the ongoing assessment of the suitability of personnel with access to a Tier 1 select agent or toxin. The procedures must include:

(i) Self- and peer-reporting of incidents or conditions that could affect an individual's ability to safely have access to or work with select agents and toxins, or to safeguard select agents and toxins from theft, loss, or release;

(ii) The training of employees with access to Tier 1 select agents and toxins on entity policies and procedures for reporting, evaluation, and corrective actions concerning the assessment of personnel suitability; and

(iii) The ongoing suitability monitoring of individuals with access to Tier 1 select agents and toxins.

(4) Entities with Tier 1 select agents and toxins must prescribe the following security enhancements:

(i) Procedures that will limit access to a Tier 1 select agent or toxin to only those individuals who are approved by the HHS Secretary or Administrator following a security risk assessment by the Attorney General, have had an entity-conducted pre-access suitability assessment, and are subject to the entity's procedures for ongoing suitability assessment;

(ii) Procedures that limit access to laboratory and storage facilities outside of normal business hours to only those specifically approved by the responsible official or designee;

(iii) Procedures for allowing visitors, their property, and vehicles at the entry and exit points to the registered space, or at other designated points of entry to the building, facility, or compound that are based on the entity's site-specific risk assessment;

(iv) A minimum of three security barriers where each security barrier adds to the delay in reaching secured areas where select agents and toxins are used or stored. One of the security barriers must be monitored in such a way as to detect intentional and unintentional circumventing of established access control measures under all conditions (day/night, severe weather, etc.) The final barrier must limit access to the select agent or toxin to personnel approved by the HHS Secretary or Administrator, following a security risk assessment by the Attorney General.

(v) All registered space or areas that reasonably afford access to the registered space must be protected by an intrusion detection system (IDS) unless physically occupied;

(vi) Personnel monitoring the IDS must be capable of evaluating and interpreting the alarm and alerting the designated security response force or law enforcement;

(vii) For powered access control systems, describe procedures to ensure that security is maintained in the event of the failure of access control systems due to power disruption affecting registered space;

(viii) The entity must:

(A) Determine that the response time for security forces or local police will not exceed 15 minutes where the response time is measured from the time

of an intrusion alarm, or report of a security incident, to the arrival of the responders at the first security barrier or;

(B) Provide security barriers that are sufficient to delay unauthorized access until the response force arrives in order to safeguard the select agents and toxins from theft, intentional release, or unauthorized access. The response time is measured from the time of an intrusion alarm, or report of a security incident, to the arrival of the responders at the first security barrier.

(5) Entities that possess foot-and-mouth disease virus and rinderpest virus must have the following additional security requirements:

(i) A minimum of four barriers, one of which must be a perimeter security fence or equivalent which is monitored 24 hours a day, 7 days a week (24/7) to detect the presence of unauthorized persons, vehicles, materials, or unauthorized activities;

(ii) Onsite 24/7 armed security response force with roving patrol. Response time must not exceed 5 minutes from the time of an intrusion alarm or report of a security incident;

(iii) CCTV surveillance with 24/7 monitoring and recording; and

(iv) Transport vehicle with GPS tracking designed to serve as a containment vehicle.

(g) In developing a security plan, an individual or entity should consider the document entitled, "Security Guidance for Select Agent or Toxin Facilities." This document is available on the National Select Agent Registry at <http://www.selectagents.gov/>.

(h) The plan must be reviewed annually and revised as necessary. Drills or exercises must be conducted at least annually to test and evaluate the effectiveness of the plan. The plan must be reviewed and revised, as necessary, after any drill or exercise and after any incident. Drills or exercises must be documented to include how the drill or exercise tested and evaluated the plan, any problems that were identified and corrective action(s) taken, and the names of registered entity personal participants.

[70 FR 13284, Mar. 18, 2005, as amended at 77 FR 61079, Oct. 5, 2012; 79 FR 26831, May 12, 2014; 82 FR 6209, Jan. 19, 2017]

§ 121.12 Biosafety.

(a) An individual or entity required to register under this part must develop and implement a written biosafety plan that is commensurate with the risk of the select agent or toxin, given its intended use.¹¹ The biosafety plan must contain sufficient information and documentation to describe the biosafety and containment procedures for the select agent or toxin, including any animals (including arthropods) or plants intentionally or accidentally exposed to or infected with a select agent. The current biosafety plan must be submitted for initial registration, renewal of registration, or when requested. The biosafety plan must include the following provisions:

(1) The hazardous characteristics of each agent or toxin listed on the entity's registration and the biosafety risk associated with laboratory procedures related to the select agent or toxin;

(2) Safeguards in place with associated work practices to protect entity personnel, the public, and the environment from exposure to the select agent or toxin including, but not limited to: Personal protective equipment and other safety equipment; containment equipment including, but not limited to, biological safety cabinets, animal caging systems, and centrifuge safety containers; and engineering controls and other facility safeguards;

(3) Written procedures for each validated method used for disinfection, decontamination, or destruction, as appropriate, of all contaminated or presumptively contaminated materials including, but not limited to: Cultures and other materials related to the propagation of select agents or toxins, items related to the analysis of select agents and toxins, personal protective equipment, animal caging systems and bedding (if applicable), animal carcasses or extracted tissues and fluids (if applicable), laboratory surfaces and equipment, and effluent material; and

(4) Procedures for the handling of select agents and toxins in the same spaces with non-select agents and toxins to prevent unintentional contamination.

¹¹ Technical assistance and guidance may be obtained by contacting APHIS.

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(b) The biosafety and containment procedures must be sufficient to contain the select agent or toxin (e.g., physical structure and features of the entity, and operational and procedural safeguards).

(c) In developing a biosafety plan, an individual or entity should consider the following:

(1) The CDC/NIH publication, "Biosafety in Microbiological and Biomedical Laboratories." This document is available on the National Select Agent Registry at <http://www.selectagents.gov/>.

(2) The "NIH Guidelines for Research Involving Recombinant or Synthetic Nucleic Acid Molecules." This document is available on the Internet at <http://www.selectagents.gov/>.

(d) The biosafety plan must include an occupational health program for individuals with access to Tier 1 select agents and toxins, and those individuals must be enrolled in the occupational health program.

(e) The plan must be reviewed annually and revised as necessary. Drills or exercises must be conducted at least annually to test and evaluate the effectiveness of the plan. The plan must be reviewed and revised, as necessary, after any drill or exercise and after any incident. Drills or exercises must be documented to include how the drill or exercise tested and evaluated the plan, any problems that were identified and corrective action(s) taken, and the names of registered entity personnel participants.

[70 FR 13284, Mar. 18, 2005, as amended at 73 FR 61331, Oct. 16, 2008; 77 FR 61080, Oct. 5, 2012; 82 FR 6209, Jan. 19, 2017]

§ 121.13 Restricted experiments.

(a) An individual or entity may not conduct, or possess products resulting from, the following experiments unless approved by and conducted in accordance with the conditions prescribed by the Administrator:

(1) Experiments that involve the deliberate transfer of, or selection for, a drug resistance trait to select agents that are not known to acquire the trait naturally, if such acquisition could compromise the control of disease agents in humans, veterinary medicine, or agriculture.

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(2) Experiments involving the deliberate formation of synthetic or recombinant DNA containing genes for the biosynthesis of select toxins lethal for vertebrates at an LD₅₀ <100 ng/kg body weight.

(b) The Administrator may revoke approval to conduct any of the experiments in paragraph (a) of this section, or revoke or suspend a certificate of registration, if the individual or entity fails to comply with the requirements of this part.

(c) To apply for approval to conduct any of the experiments in paragraph (a) of this section, an individual or entity must submit a written request and supporting scientific information. A written decision granting or denying the request will be issued.

[70 FR 13284, Mar. 18, 2005, as amended at 73 FR 61331, Oct. 16, 2008; 77 FR 61080, Oct. 5, 2012; 79 FR 26831, May 12, 2014]

§ 121.14 Incident response.¹²

(a) An individual or entity required to register under this part must develop and implement a written incident response plan¹³ based upon a site specific risk assessment. The incident response plan must be coordinated with any entity-wide plans, kept in the workplace, and available to employees for review. The current incident response plan must be submitted for initial registration, renewal of registration, or when requested.

(b) The incident response plan must fully describe the entity's response procedures for the theft, loss, or release of a select agent or toxin; inventory discrepancies; security breaches (including information systems); severe weather and other natural disasters; workplace violence; bomb threats and suspicious packages; and emergencies such as fire, gas leak, explosion, power outage, and other natural and man-made events.

(c) The response procedures must account for hazards associated with the select agent or toxin and appropriate

¹²Nothing in this section is meant to supersede or preempt incident response requirements imposed by other statutes or regulations.

¹³Technical assistance and guidance may be obtained by contacting APHIS.

actions to contain such select agent or toxin, including any animals (including arthropods) or plants intentionally or accidentally exposed to or infected with a select agent.

(d) The incident response plan must also contain the following information:

(1) The name and contact information (e.g., home and work) for the individual or entity (e.g., responsible official, alternate responsible official(s), biosafety officer, etc.);

(2) The name and contact information for the building owner and/or manager, where applicable;

(3) The name and contact information for tenant offices, where applicable;

(4) The name and contact information for the physical security official for the building, where applicable;

(5) Personnel roles and lines of authority and communication;

(6) Planning and coordination with local emergency responders;

(7) Procedures to be followed by employees performing rescue or medical duties;

(8) Emergency medical treatment and first aid;

(9) A list of personal protective and emergency equipment, and their locations;

(10) Site security and control;

(11) Procedures for emergency evacuation, including type of evacuation, exit route assignments, safe distances, and places of refuge; and

(12) Decontamination procedures.

(e) Entities with Tier 1 select agents and toxins must have the following additional incident response policies or procedures:

(1) The incident response plan must fully describe the entity's response procedures for failure of intrusion detection or alarm system; and

(2) The incident response plan must describe procedures for how the entity will notify the appropriate Federal, State, or local law enforcement agencies of suspicious activity that may be criminal in nature and related to the entity, its personnel, or its select agents or toxins.

(f) The plan must be reviewed annually and revised as necessary. Drills or exercises must be conducted at least annually to test and evaluate the effec-

tiveness of the plan. The plan must be reviewed and revised, as necessary, after any drill or exercise and after any incident. Drills or exercises must be documented to include how the drill or exercise tested and evaluated the plan, any problems that were identified and corrective action(s) taken, and the names of registered entity personnel participants.

[70 FR 13284, Mar. 18, 2005, as amended at 73 FR 61331, Oct. 16, 2008; 77 FR 61080, Oct. 5, 2012; 82 FR 6209, Jan. 19, 2017]

§ 121.15 Training.

(a) An individual or entity required to register under this part must provide information and training on biocontainment, biosafety, security (including security awareness), and incident response to:

(1) Each individual with access approval from the Administrator or HHS Secretary. The training must address the particular needs of the individual, the work they will do, and the risks posed by the select agents or toxins. The training must be accomplished prior to the individual's entry into an area where a select agent is handled or stored, or within 12 months of the date the individual was approved by the Administrator or the HHS Secretary for access, whichever is earlier.

(2) Each individual not approved for access to select agents and toxins by the Administrator or HHS Secretary before that individual enters areas under escort where select agents or toxins are handled or stored (e.g., laboratories, growth chambers, animal rooms, greenhouses, storage areas, shipping/receiving areas, production facilities, etc.). Training for escorted personnel must be based on the risk associated with accessing areas where select agents and toxins are used and/or stored. The training must be accomplished prior to the individual's entry into where select agents or toxins are handled or stored (e.g., laboratories, growth chambers, animal rooms, greenhouses, storage areas, shipping/receiving areas, production facilities, etc.).

(b) Entities with Tier 1 select agents and toxins must conduct annual insider threat awareness briefings on how to identify and report suspicious behaviors.

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(c) Refresher training must be provided annually for individuals with access approval from the HHS Secretary or Administrator or at such time as the registered individual or entity significantly amends its security, incident response, or biosafety plans.

(d) The responsible official must ensure a record of the training provided to each individual with access to select agents and toxins and each escorted individual (e.g., laboratory workers, visitors, etc.) is maintained. The record must include the name of the individual, the date of the training, a description of the training provided, and the means used to verify that the employee understood the training.

(e) The responsible official must ensure and document that individuals are provided the contact information of the USDA Office of Inspector General Hotline and the HHS Office of Inspector General Hotline so that they may anonymously report any safety or security concerns related to select agents and toxins.

[77 FR 61081, Oct. 5, 2012, as amended at 82 FR 6209, Jan. 19, 2017]

§ 121.16 Transfers.

(a) Except as provided in paragraphs (c) and (d) of this section, a select agent or toxin may only be transferred to individuals or entities registered to possess, use, or transfer that agent or toxin. A select agent or toxin may only be transferred under the conditions of this section and must be authorized by APHIS or CDC prior to the transfer.¹⁴

(b) A transfer may be authorized if:

(1) The sender:

(i) Has at the time of transfer a certificate of registration that covers the particular select agent or toxin to be transferred and meets all the requirements of this part;

(ii) Meets the exemption requirements for the particular select agent or toxin to be transferred; or

(iii) Is transferring the select agent or toxin from outside of the United States and meets all import requirements.

¹⁴The requirements of this section do not apply to transfers within a registered entity (*i.e.*, the sender and the recipient are covered by the same certificate of registration).

(2) At the time of transfer, the recipient has a certificate of registration that includes the particular select agent or toxin to be transferred and meets all of the requirements of this part.

(c) A select agent or toxin that is contained in a specimen for proficiency testing may be transferred without prior authorization from APHIS or CDC provided that, at least 7 calendar days prior to the transfer, the sender reports to APHIS or CDC the select agent or toxin to be transferred and the name and address of the recipient.

(d) On a case-by-case basis, the Administrator may authorize a transfer of a select agent or toxin not otherwise eligible for transfer under this part under conditions prescribed by the Administrator.

(e) To obtain authorization for a transfer, APHIS/CDC Form 2 must be submitted.

(f) After authorization is provided by APHIS or CDC, the packaging of the select agent(s) and toxin(s) is performed by an individual approved by the HHS Secretary or Administrator to have access to select agents and toxins and is in compliance with all applicable laws concerning packaging.

(g) The sender must comply with all applicable laws governing shipping.

(h) Transportation in commerce starts when the select agent(s) or toxin(s) are packaged for shipment and ready for receipt by a courier transporting select agent(s) or toxin(s) and ends when the package is received by the intended recipient who is an individual approved by the HHS Secretary or Administrator to have access to select agents and toxins, following a security risk assessment by the Attorney General.

(i) The recipient must submit a completed APHIS/CDC Form 2 within 2 business days of receipt of a select agent or toxin.

(j) The recipient must immediately notify APHIS or CDC if the select agent or toxin has not been received within 48 hours after the expected delivery time or if the package containing the select agent or toxin has been damaged to the extent that a release of the select agent or toxin may have occurred.

(k) An authorization for a transfer shall be valid only for 30 calendar days after issuance, except that such an authorization becomes immediately null and void if any facts supporting the authorization change (e.g., change in the certificate of registration for the sender or recipient, change in the application for transfer).

(l) Transfer the amounts only after the transferor uses due diligence and documents that the recipient has a legitimate need (e.g., prophylactic, protective, bona fide research, or other peaceful purpose) to handle or use such toxins. Information to be documented includes, but is not limited, to the recipient information, toxin and amount transferred, and declaration that the recipient has legitimate purpose to store and use such toxins.

[70 FR 13284, Mar. 18, 2005, as amended at 73 FR 61331, Oct. 16, 2008; 77 FR 61081, Oct. 5, 2012; 82 FR 6210, Jan. 19, 2017]

§ 121.17 Records.

(a) An individual or entity required to register under this part must maintain complete records relating to the activities covered by this part. Such records must include:

(1) An accurate, current inventory for each select agent (including viral genetic elements, recombinant and/or synthetic nucleic acids, and organisms containing recombinant and/or synthetic nucleic acids) held in long-term storage (placement in a system designed to ensure viability for future use, such as in a freezer or lyophilized materials), including:

(i) The name and characteristics (e.g., strain designation, GenBank Accession number, etc.);

(ii) The quantity acquired from another individual or entity (e.g., containers, vials, tubes, etc.), date of acquisition, and the source;

(iii) Where stored (e.g., building, room, and freezer or other storage container);

(iv) When moved from storage and by whom and when returned to storage and by whom;

(v) The select agent used, purpose of use, and, when applicable, final disposition;

(vi) Records created under § 121.16 or 42 CFR 73.16 (Transfers);

(vii) For intra-entity transfers (sender and the recipient are covered by the same certificate of registration), the select agent, the quantity transferred, the date of transfer, the sender, and the recipient; and

(viii) Records created under § 121.19 or 42 CFR 73.19 (Notification of theft, loss, or release);

(2) An accurate, current accounting of any animals or plants intentionally or accidentally exposed to or infected with a select agent (including number and species, location, and appropriate disposition);

(3) An accurate, current inventory for each toxin held, including:

(i) The name and characteristics;

(ii) The quantity acquired from another individual or entity (e.g., containers, vials, tubes, etc.), date of acquisition, and the source;

(iii) The initial and current quantity amount (e.g., milligrams, milliliters, grams, etc.);

(iv) The toxin used and purpose of use, quantity, date(s) of the use and by whom;

(v) Where stored (e.g., building, room, and freezer or other storage container);

(vi) When moved from storage and by whom and when returned to storage and by whom, including quantity amount;

(vii) Records created under § 121.16 or 42 CFR 73.16 (Transfers);

(viii) For intra-entity transfers (sender and the recipient are covered by the same certificate of registration), the toxin, the quantity transferred, the date of transfer, the sender, and the recipient;

(ix) Records created under § 121.19 or 42 CFR 73.19 (Notification of theft, loss, or release);

(x) If destroyed, the quantity of toxin destroyed, the date of such action, and by whom.

(4) A current list of all individuals that have been granted access approval by the Administrator or the HHS Secretary;

(5) Information about all entries into areas containing select agents or toxins, including the name of the individual, name of the escort (if applicable), and the date and time of entry;

(6) Accurate, current records created under § 121.9 or 42 CFR 73.9 (Responsible

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official), §121.11 or 42 CFR 73.11 (Security), §121.12 or 42 CFR 73.12 (Biosafety), §121.14 or 42 CFR 73.14 (Incident response), and §121.15 or 42 CFR 73.15 (Training);

(7) A written explanation of any discrepancies; and

(8) For select agents or material containing select agents or regulated nucleic acids that can produce infectious forms of any select agent virus that have been subjected to a validated inactivation procedure or a procedure for removal of viable select agent:

(i) A written description of the validated inactivation procedure or viable select agent removal method used, including validation data;

(ii) A written description of the viability testing protocol used;

(iii) A written description of the investigation conducted by the entity responsible official involving an inactivation or viable select agent removal failure and the corrective actions taken;

(iv) The name of each individual performing the validated inactivation or viable select agent removal method;

(v) The date(s) the validated inactivation or viable select agent removal method was completed;

(vi) The location where the validated inactivation or viable select agent removal method was performed; and

(vii) A certificate, signed by the principal investigator, that includes the date of inactivation or viable select agent removal, the validated inactivation or viable select agent removal method used, and the name of the principal investigator. A copy of the certificate must accompany any transfer of inactivated or select agent removed material.

(b) The individual or entity must implement a system to ensure that all records and databases created under this part are accurate and legible, have controlled access, and that their authenticity may be verified.

(c) The individual or entity must promptly produce upon request any information that is related to the requirements of this part but is not otherwise contained in a record required to be kept by this section. The location of such information may include, but is not limited to, biocontainment certifi-

cations, laboratory notebooks, institutional biosafety and/or animal use committee minutes and approved protocols, and records associated with occupational health and suitability programs. All records created under this part must be maintained for 3 years.

[70 FR 13284, Mar. 18, 2005, as amended at 77 FR 61081, Oct. 5, 2012; 82 FR 6210, Jan. 19, 2017]

§ 121.18 Inspections.

(a) Without prior notification, APHIS must be allowed to inspect any site at which activities regulated under this part are conducted and must be allowed to inspect and copy any records relating to the activities covered by this part.

(b) Prior to issuing a certificate of registration to an individual or entity, APHIS may inspect and evaluate the premises and records to ensure compliance with this part.

§ 121.19 Notification of theft, loss, or release.

(a) An individual or entity must immediately notify APHIS or CDC upon discovery of the theft or loss of a select agent or toxin. Thefts or losses must be reported even if the select agent or toxin is subsequently recovered or the responsible parties are identified.

(1) The theft or loss of a select agent or toxin must be reported by telephone, facsimile, or e-mail. The following information must be provided:

(i) The name of the select agent or toxin and any identifying information (e.g., strain or other characterization information);

(ii) An estimate of the quantity stolen or lost;

(iii) An estimate of the time during which the theft or loss occurred;

(iv) The location (building, room) from which the theft or loss occurred; and

(v) The list of Federal, State, or local law enforcement agencies to which the individual or entity reported, or intends to report, the theft or loss.

(2) A completed APHIS/CDC Form 3 must be submitted within 7 calendar days.

(b) An individual or entity must immediately notify APHIS or CDC upon discovery of a release of a select agent

or toxin causing occupational exposure or a release of a select agent or toxin outside of the primary barriers of the biocontainment area.

(1) The release of a select agent or toxin must be reported by telephone, facsimile, or e-mail. The following information must be provided:

(i) The name of the select agent or toxin and any identifying information (e.g., strain or other characterization information);

(ii) An estimate of the quantity released;

(iii) The time and duration of the release;

(iv) The environment into which the release occurred (e.g., in building or outside of building, waste system);

(v) The location (building, room) from which the release occurred; and

(vi) The number of individuals potentially exposed at the entity;

(vii) Actions taken to respond to the release; and

(viii) Hazards posed by the release.

(2) A completed APHIS/CDC Form 3 must be submitted within 7 calendar days.

§ 121.20 Administrative review.

(a) An individual or entity may appeal a denial, revocation, or suspension of registration under this part. The appeal must be in writing, state the factual basis for the appeal, and be submitted to the Administrator within 30 calendar days of the decision.

(b) An individual may appeal a denial, limitation, or revocation of access approval under this part. The appeal must be in writing, state the factual basis for the appeal, and be submitted to the Administrator within 180 calendar days of the decision.

(c) The Administrator's decision constitutes final agency action.

[77 FR 61081, Oct. 5, 2012]

PART 122—ORGANISMS AND VECTORS

Sec.

122.1 Definitions.

122.2 Permits required.

122.3 Application for permits.

122.4 Suspension or revocation of permits.

AUTHORITY: 7 U.S.C. 8301–8317; 21 U.S.C. 151–158; 7 CFR 2.22, 2.80, and 371.4.

§ 122.1 Definitions.

The following words, when used in the regulations in this part 122, shall be construed, respectively, to mean:

(a) *Department*. The U.S. Department of Agriculture.

(b) *Secretary*. “Secretary” means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(c) *Administrator*. The Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, or any person authorized to act for the Administrator.

(d) *Organisms*. All cultures or collections of organisms or their derivatives, which may introduce or disseminate any contagious or infectious disease of animals (including poultry).

(e) *Vectors*. All animals (including poultry) such as mice, pigeons, guinea pigs, rats, ferrets, rabbits, chickens, dogs, and the like, which have been treated or inoculated with organisms, or which are diseased or infected with any contagious, infectious, or communicable disease of animals or poultry or which have been exposed to any such disease.

(f) *Permittee*. A person who resides in the United States or operates a business establishment within the United States, to whom a permit to import or transport organisms or vectors has been issued under the regulations.

(g) *Person*. Any individual, firm, partnership, corporation, company, society, association, or other organized group of any of the foregoing, or any agent, officer, or employee of any thereof.

[31 FR 81, Jan. 5, 1966, as amended at 57 FR 30899, July 13, 1992]

§ 122.2 Permits required.

No organisms or vectors shall be imported into the United States or transported from one State or Territory or the District of Columbia to another State or Territory or the District of Columbia without a permit issued by the Secretary and in compliance with the terms thereof: *Provided*, That no permit shall be required under this section for importation of organisms for