

(2) Nucleic acids (synthetic or naturally derived) that encode for the functional form(s) of any of the toxins listed in paragraph (d) of this section if the nucleic acids:

(i) Are in a vector or host chromosome;

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

(iii) Are in a vector or host chromosome and can be expressed *in vivo* or *in vitro*.

(3) Viruses, bacteria, fungi, and toxins listed in paragraphs (a) through (d) of this section that have been genetically modified.

(f) Exclusions:

(1) This section does not include any select agent or toxin that is in its naturally occurring environment provided it has not been intentionally introduced, cultivated, collected, or otherwise extracted from its natural source.

(2) This section does not include non-viable select agent organisms or non-functional toxins.

(3) Paragraph (a) of this section does not include the vaccine strain of Junin virus (Candid #1).

(4) Paragraph (d) of this section does not include the following toxins (in the purified form or in combinations of pure and impure forms) if the aggregate amount under the control of a principal investigator does not, at any time, exceed the amount specified: 100 mg of Abrin; 100 mg of Conotoxins; 1,000 mg of Diacetoxyscirpenol; 100 mg of Ricin; 100 mg of Saxitoxin; 100 mg of Shiga-like ribosome inactivating proteins; or 100 mg of Tetrodotoxin.

(5) The HHS Secretary may exclude from this section attenuated strains of HHS select agents or toxins upon a determination that they do not pose a severe threat to the public health and safety. To apply for an exclusion an applicant must submit a request in writing in accordance with § 73.21 to the HHS Secretary establishing that the attenuated strain or toxin is eligible for exclusion. The HHS Secretary will provide a written decision granting the request, in whole or in part, or denying the request. An exclusion will be effective upon notification to the applicant. Exclusions will be published in the notice section of the FEDERAL REGISTER and will be listed on the CDC Web site

at <http://www.cdc.gov>. Exclusions also will be referenced in this section when changes are made based on periodic reviews.

§ 73.5 Overlap select agents and toxins.

Except for exclusions under paragraph (f) of this section, the viruses, bacteria, fungi, toxins, genetic elements, recombinant nucleic acids, and recombinant organisms specified in paragraphs (a) through (e) of this part are overlap select agents and toxins.

(a) Viruses:

(1) Eastern Equine Encephalitis virus.

(2) Nipah and Hendra Complex viruses.

(3) Rift Valley fever virus.

(4) Venezuelan Equine Encephalitis virus.

(b) Bacteria:

(1) *Bacillus anthracis*.

(2) *Brucella abortus*.

(3) *Brucella melitensis*.

(4) *Brucella suis*.

(5) *Burkholderia mallei* (formerly *Pseudomonas mallei*).

(6) *Burkholderia pseudomallei* (formerly *Pseudomonas pseudomallei*).

(7) Botulinum neurotoxin producing species of *Clostridium*.

(8) *Coxiella burnetii*.

(9) *Francisella tularensis*.

(c) Fungi: *Coccidioides immitis*.

(d) Toxins:

(1) Botulinum neurotoxins.

(2) *Clostridium perfringens* epsilon toxin.

(3) Shigatoxin.

(4) Staphylococcal enterotoxins.

(5) T-2 toxin.

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

(1) Select agent viral nucleic acids (synthetic or naturally derived, contiguous or fragmented, in host chromosomes or in expression vectors) that can encode infectious and/or replication competent forms of any of the select agent viruses.

(2) Nucleic acids (synthetic or naturally derived) that encode for the functional form(s) of any of the toxins listed in paragraph (d) of this section if the nucleic acids:

(i) Are in a vector or host chromosome;

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

(iii) Are in a vector or host chromosome and can be expressed *in vivo* or *in vitro*.

(3) Viruses, bacteria, fungi, and toxins listed in paragraphs (a) through (d) of this section that have been genetically modified.

(f) Exclusions:

(1) This section does not include any select agent or toxin that is in its naturally occurring environment provided that it has not been intentionally introduced, cultivated, collected, or otherwise extracted from its natural source.

(2) This section does not include non-viable select agent organisms or non-functional toxins.

(3) Paragraph (a) does not include the vaccine strain of Rift Valley fever virus (MP-12) or Venezuelan Equine encephalitis virus vaccine strain TC-83.

(4) Paragraph (d) of this section does not include the following toxins (in the purified form or in combinations of pure and impure forms) if the aggregate amount under the control of a principal investigator does not, at any time, exceed the amount specified: 0.5 mg of Botulinum neurotoxins; 5 mg of Staphylococcal enterotoxins; 100 mg of *Clostridium perfringens* epsilon toxin; 100 mg of Shigatoxin; or 1,000 mg of T-2 toxin.

(5) The HHS Secretary, after consultation with the USDA Secretary, may exclude from this section attenuated strains of overlap select agents or toxins upon a determination that they do not pose a severe threat to the public health and safety and do not meet the criteria in 9 CFR part 121 for inclusion. To apply for an exclusion, an applicant must submit a request in writing in accordance with § 73.21 to the HHS Secretary or the USDA Secretary in accordance with 9 CFR part 121, establishing that the attenuated strain is eligible for exclusion. In response to an application submitted to the HHS Secretary, the HHS Secretary will provide a written decision granting the request, in whole or in part, or denying the request. An exclusion will be effective upon notification to the applicant. Exclusions will be published in the notice section of the FEDERAL REGISTER

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and will be listed on the CDC Web site at <http://www.cdc.gov>. Also, they will be referenced in this section when changes are made based on periodic reviews.

§ 73.6 Exemptions from requirements under this part.

(a) An entity is exempt from the provisions of this part, other than § 73.14 (transfer), provided that all of the following apply:

(1) The only activities conducted by the entity that are subject to this part concern select agents or toxins that are contained in specimens or in isolates from specimens presented for diagnosis, verification, or proficiency testing;

(2) Upon identification of a select agent or toxin as the result of diagnosis or verification, the entity immediately reports to the HHS Secretary by telephone, facsimile, or e-mail in accordance with § 73.21 any of the following: Variola major virus (Smallpox virus) and Variola minor (Alastrim), *Bacillus anthracis*, *Yersinia pestis*, Botulinum neurotoxins, *Francisella tularensis*, Ebola viruses, Marburg virus, Lassa fever virus, and South American Haemorrhagic Fever viruses (Junin, Machupo, Sabia, Flexal, Guanarito);

(3) The entity reports as required under Federal, State, or local law, to appropriate authorities;

(4) After the diagnosis, verification, or proficiency testing, the entity either transfers the specimens or isolates containing a select agent or toxin from the specimens to a facility eligible for receiving them under this part, or destroys them on-site by autoclaving, incineration, or by a sterilization or neutralization process sufficient to cause inactivation;

(5) The entity transfers or destroys those select agents or toxins used for diagnosis or testing within seven days after identification, unless directed otherwise by the Federal Bureau of Investigation or other law enforcement entity after consultation with the HHS Secretary; and

(6) The entity transfers or destroys those select agents or toxins used for proficiency testing within 90 days after receipt; and