

*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.

*Toxin.* The toxic material or product of plants, animals, microorganisms (including, but not limited to, bacteria, viruses, fungi, rickettsiae, 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.

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

*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.

**§ 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.

- (b) VS select agents and toxins:
- African horse sickness virus;
  - African swine fever virus;
  - Akabane virus;
  - Avian influenza virus (highly pathogenic);
  - Bluetongue virus (exotic);
  - Bovine spongiform encephalopathy agent;
  - Camel pox virus;
  - Classical swine fever virus;
  - Cowdria ruminantium* (Heartwater);
  - Foot-and-mouth disease virus;
  - Goat pox virus;
  - Japanese encephalitis virus;
  - Lumpy skin disease virus;
  - Malignant catarrhal fever virus (Alcelaphine herpesvirus type 1);
  - Menangle virus;
  - Mycoplasma capricolum*/M. F38/M. *mycoides capri* (contagious caprine pleuropneumonia);
  - Mycoplasma mycoides mycoides* (contagious bovine pleuropneumonia);
  - Newcastle disease virus (velogenic);
  - Peste des petits ruminants virus;
  - Rinderpest virus;
  - Sheep pox virus;
  - Swine vesicular disease virus;
  - Vesicular stomatitis virus (exotic).

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

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

<sup>1</sup>The 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.

(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 nonfunctional VS toxins.<sup>2</sup>

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

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

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

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

state, in writing, the reasons for the decision.

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

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

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

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

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

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

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

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

<sup>2</sup>However, the importation and interstate movement of these nonviable select agents may be subject to the permit requirements under part 122 of this subchapter.