

DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

Int. No. 87-3-RSPA

INTERPRETATION

SOURCE: David H. Jet, Esq.,
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FACTS: David H. Jett requests an interpretation to clarify paragraphs (b) and (d) of 49 CFR § 173.386. Section 173.386 defines etiologic agents and the regulations applicable to their transportation. Paragraph (b) specifically states: ". . . except as provided in paragraph (d), no person may ship any material, including . . . a biological product, containing an etiologic agent unless this material is packaged and prepared for shipment in accordance with § 173.24 and [the] other applicable regulations of this subchapter." Paragraph (d), which excepts certain substances from Part 173 regulation, states:

"The following substances are not subject to any [re]quirements of this subchapter if the items as packaged do not contain any material otherwise subject to the requirements of Parts 170 through 189 of this subchapter:

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- (2) Biological Products
- (3) Cultures of etiologic agents. . . ."

Mr. Jet inquires whether pursuant to paragraph (b), biological products that include etiologic agents are subject to the packaging provisions of Part 173 or whether they are exempt from regulation under paragraph (d)?

INTERPRETATION: Under paragraph (d), biological products that contain etiologic agents, but which do not contain another hazardous material are not subject to the packaging requirements of Part 173. There is a discrepancy between the language in paragraphs (b) and (d) of § 173.386. The applicability statement of paragraph (b) implies that biological products which contain etiologic agents are subject to the general packaging provisions of § 173.24 and the other requirements of the HMR. However, the exception provided in paragraph (d) is intended to exclude biological products that contain etiologic agents, but do not contain any other hazardous materials (e.g., formaldehyde, flammable liquid solvents). RSPA intends to address the discrepancy between paragraphs (b) and (d) of § 173.386 in a future rulemaking action. Accordingly, biological products which contain etiologic agents, but no other hazardous material subject to the HMR, are not subject to the packaging requirements of Part 173.


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Cc. Mr. Sullivan, John O'Connell, Ed. Maggiano,
JAP-ACC-269, HRA-ACC-29, CC-E-LMI, HRA-ACC-30