

§ 1.277

21 CFR Ch. I (4-1-06 Edition)

in a Territory, the FDA Country of Production is the United States.

(5) *Food* has the meaning given in section 201(f) of the act,

(i) Except for purposes of this subpart, it does not include:

(A) Food contact substances as defined in section 409(h)(6) of the act (21 U.S.C. 348(h)(6)); or

(B) Pesticides as defined in 7 U.S.C. 136(u).

(ii) Examples of food include fruits, vegetables, fish, including seafood, dairy products, eggs, raw agricultural commodities for use as food or as components of food, animal feed (including pet food), food and feed ingredients, food and feed additives, dietary supplements and dietary ingredients, infant formula, beverages (including alcoholic beverages and bottled water), live food animals, bakery goods, snack foods, candy, and canned foods.

(6) *Grower* means a person who engages in growing and harvesting or collecting crops (including botanicals), raising animals (including fish, which includes seafood), or both.

(7) *International mail* means foreign national mail services. International mail does not include express carriers, express consignment operators, or other private delivery services.

(8) *No longer in its natural state* means that an article of food has been made from one or more ingredients or synthesized, prepared, treated, modified, or manipulated. Examples of activities that render food no longer in its natural state are cutting, peeling, trimming, washing, waxing, eviscerating, rendering, cooking, baking, freezing, cooling, pasteurizing, homogenizing, mixing, formulating, bottling, milling, grinding, extracting juice, distilling, labeling, or packaging. Crops that have been cleaned (*e.g.*, dusted, washed), trimmed, or cooled attendant to harvest or collection or treated against pests, waxed, or polished are still in their natural state for purposes of this subpart. Whole fish headed, eviscerated, or frozen attendant to harvest are still in their natural state for purposes of this subpart.

(9) *Port of arrival* means the water, air, or land port at which the article of food is imported or offered for import into the United States, *i.e.*, the port

where the article of food first arrives in the United States. This port may be different than the port where consumption or warehouse entry or foreign trade zone admission documentation is presented to the United States Bureau of Customs and Border Protection (CBP).

(10) *Port of entry*, in sections 801(m) and 801(l) of the act, means the port of entry as defined in 19 CFR 101.1.

(11) *Registration number* refers to the registration number assigned by FDA under section 415 of the act (21 U.S.C. 350d) and 21 CFR part 1, subpart H.

(12) *Shipper* means the owner or exporter of the article of food who consigns and ships the article from a foreign country or the person who sends an article of food by international mail to the United States.

(13) *United States* means the Customs territory of the United States (*i.e.*, the 50 states, the District of Columbia, and the Commonwealth of Puerto Rico), but not the Territories.

(14) *You* means the person submitting the prior notice, *i.e.*, the submitter, or the person transmitting prior notice information on behalf of the submitter, *i.e.*, the transmitter.

[68 FR 59070, Oct. 10, 2003; 69 FR 4851, Feb. 2, 2004]

§ 1.277 What is the scope of this subpart?

(a) This subpart applies to all food for humans and other animals that is imported or offered for import into the United States for use, storage, or distribution in the United States, including food for gifts and trade and quality assurance/quality control samples, food for transshipment through the United States to another country, food for future export, and food for use in a U.S. Foreign Trade Zone.

(b) Notwithstanding paragraph (a), this subpart does not apply to:

(1) Food for an individual's personal use when it is carried by or otherwise accompanies the individual when arriving in the United States;

(2) Food that was made by an individual in his/her personal residence and sent by that individual as a personal gift (*i.e.*, for non-business reasons) to an individual in the United States;

(3) Food that is imported then exported without leaving the port of arrival until export;

(4) Meat food products that at the time of importation are subject to the exclusive jurisdiction of the U.S. Department of Agriculture (USDA) under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*);

(5) Poultry products that at the time of importation are subject to the exclusive jurisdiction of USDA under the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*); and

(6) Egg products that at the time of importation are subject to the exclusive jurisdiction of USDA under the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*).

REQUIREMENTS TO SUBMIT PRIOR NOTICE OF IMPORTED FOOD

§ 1.278 Who is authorized to submit prior notice?

A prior notice for an article of food may be submitted by any person with knowledge of the required information. This person is the submitter. The submitter also may use another person to transmit the required information on his/her behalf. The person who transmits the information is the transmitter. The submitter and transmitter may be the same person.

§ 1.279 When must prior notice be submitted to FDA?

(a) Except as provided in paragraph (c) of this section, you must submit the prior notice to FDA and the prior notice submission must be confirmed by FDA for review as follows:

(1) If the article of food is arriving by land by road, no less than 2 hours before arriving at the port of arrival;

(2) If the article of food is arriving by land by rail, no less than 4 hours before arriving at the port of arrival;

(3) If the article of food is arriving by air, no less than 4 hours before arriving at the port of arrival; or

(4) If the article of food is arriving by water, no less than 8 hours before arriving at the port of arrival.

(b) Except in the case of an article of food imported or offered for import by international mail, you may not submit prior notice more than 5 calendar

days before the anticipated date of arrival of the food at the anticipated port of arrival.

(c) Notwithstanding paragraphs (a) and (b) of this section, if the article of food is arriving by international mail, you must submit the prior notice before the article of food is sent to the United States.

(d) FDA will notify you that your prior notice has been confirmed for review with a reply message that contains a Prior Notice (PN) Confirmation Number. Your prior notice will be considered submitted and the prior notice time will start when FDA has confirmed your prior notice for review.

(e) The PN Confirmation Number must accompany any article of food arriving by international mail. The PN Confirmation Number must appear on the Customs Declaration that accompanies the package.

(f) A copy of the confirmation, including the PN Confirmation Number, must accompany any article of food that is subject to this subpart when it is carried by or otherwise accompanies an individual when arriving in the United States. The copy of the confirmation must be provided to CBP or FDA upon arrival.

(g) The PN Confirmation Number must accompany any article of food for which the prior notice was submitted through the FDA Prior Notice System Interface (FDA PN System Interface) when the article arrives in the United States and must be provided to CBP or FDA upon arrival.

[68 FR 59070, Oct. 10, 2003; 69 FR 4851, Feb. 2, 2004]

§ 1.280 How must you submit prior notice?

(a) You must submit the prior notice electronically to FDA. You must submit all prior notice information in the English language, except that an individual's name, the name of a company, and the name of a street may be submitted in a foreign language. All information, including these items, must be submitted using the Latin (Roman) alphabet. Unless paragraphs (c) and (d) of this section apply, you must submit prior notice through: