

Update on Food in Unaccompanied Air Baggage (UAB) and Household Effects (HHE): Revised Policy Guidance from the Food and Drug Administration

The Food and Drug Administration (FDA) has revised its policy guidance for prior notice of foodstuffs in shipments, alleviating a concern about in-bound household effects. FDA and Customs agents have been advised to exercise enforcement discretion until the final rule for food imports is published. The revised rule will exempt food imported for non-commercial purposes where the shipper is an individual.

The Bioterrorism Act of 2002 required that the FDA receive prior notice of food imported into the United States beginning December 12, 2003. As initially adopted, the regulation prohibited employees from shipping foodstuffs back to the United States in unaccompanied baggage or household effects shipments. As noted in reftel, the FDA planned to publish changes to exempt personal effects by June 2004 and agreed that the regulations would not be enforced for personal effects shipment (UAB and HHE) until August 2004. Those changes are outlined below.

The FDA revised the compliance policy guidance (CPG) for prior notice of foodstuffs in Household Effects on June 24. FDA and Customs and Border Protection (CBP) will exercise enforcement discretion until the final rule for foods imported or offered for import for non-commercial purposes is issued. The CPG explains that a "non-commercial purpose" generally exists when the food is purchased or otherwise acquired by an individual for non-business purposes and the shipper is an individual (i.e., the individual delivers the food to a post office or common carrier for delivery to self, family member, or friend for non-business purposes, i.e., not for sale, resale, barter, business use, or commercial use).

The revised CPG includes examples of foods imported or offered for import that may be covered by this non-commercial category, including:

- * Food in household goods, including military, civilian, governmental agency, and diplomatic transfers;
- * Food purchased by a traveler and mailed or shipped to the traveler's U.S. address by the traveler;
- * Gifts purchased at a commercial establishment and shipped by the purchaser, not the commercial establishment.

The revised guidance also clarifies that an individual is a sole human being, not a corporation, and clarifies the difference between a shipper and a carrier. This revised guidance applies to non-commercial shipments with non-commercial shippers, irrespective of the carrier, which could be a foreign mail service, a courier, or a common carrier.