

April 2017

This edition is a little long, but much is going on this month!

FDA to start implementing FSVP next month (From NCBFAA)

Starting May 27, 2017, the FDA will begin implementing the FDA's Food Supplier Verification Program (FSVP).

A central feature of the Food Safety Modernization Act (FSMA), the FSVP is intended to be a flexible, risk-based program to **verify foreign suppliers** and the safety of the food they produce. FSVP will require:

- Identification of the "FSVP importer" for food products imported into the U.S.
- The FSVP Importer is responsible for establishing foreign supplier verification programs to verify that that their foreign suppliers are using safe processes and procedures and that the food is not adulterated or misbranded.

As it now stands, the FSVP Importer *must* be identified on ACE entry documents after May 27. As for importer responsibilities to verify foreign suppliers, we expect the FDA will do "soft" compliance initially, recognizing that this is a major change for importers. Nevertheless, each importer must determine if he is the FSVP Importer (and, if not, who is) so they can begin efforts to verify foreign suppliers.

Who Is the FSVP Importer?

The FSVP Importer might be, but is not necessarily, the same party as the Importer of Record. The FSVP importer must be a U.S. party with a **direct financial interest** in the food product. Specifically, the FSVP Importer is:

- the U.S. owner or consignee of the product
- if there is no U.S. owner or consignee at the time of entry, the foreign owner of the food must appoint a U.S. agent who will be

responsible for ensuring that supplier verification activities are conducted for each food product imported. The FSVP agent must be designated in a written document with signed consent by the agent. The FSVP agent should not be confused with the agent for food facility registration. They serve separate and distinct roles.

The FDA defines U.S. owner/consignee as the person who, at the time of entry, *owns the food, has purchased the food, or has agreed in writing to purchase the food.*

What Is Required of the FSVP Importer?

After May 27, for each line entry of food product offered for import into the U.S., the FSVP Importer must provide us the name, contact info, DUNS # and FDA registration number of the FSVP Importer so we can provide it in ACE at the time of entry.

Steps To Take Now

- 1. Make sure you are aware of what is required of the FSVP.** Many food-related associations have been educating their members on the specific details of the FSVP. If you are not yet aware, useful information can be found [here](#) and the final rule is [here](#).
- 2. Identify the FSVP Importer** and provide us with the FSVP Importer's contact information, DUNS # and food facility registration number. If the Importer of Record is the US owner or consignee, he is by definition the FSVP Importer. (Customs brokers, warehouses or other similar intermediaries are not considered by FDA to be the FSVP Importer because they are not an owner or consignee and do not have a direct financial interest in the food product).
- 3. If the owner of the food product is not a U.S. person**, then the foreign owner can designate a U.S. agent, with the agent's consent in writing, who will then become the FSVP Importer responsible for ensuring that supplier verification activities are conducted for each food product imported. This is not a passive role, but requires affirmative steps to ensure that supplier

verification by a qualified individual takes place. A number of FSVP-oriented consultants are available to assume this role.

4. **The FSVP Importer can establish his own internal program to verify the suppliers, using an in-house "qualified individual," or he can use a third-party entity qualified to assist with the verification.** While the FDA allows flexibility in determining how to verify depending on the circumstances, it is very clear the program must be rigorous enough to assure that imported food is safe. For example, the FDA identifies the following as examples of verification activities: onsite auditing, sampling and testing of a food, review of the foreign supplier's relevant food safety records, and other activities that are appropriate based on the evaluation of the risk posed by the food and foreign supplier performance.
5. **Some food products are exempt** (juice under HACCP, seafood, alcoholic beverages, among others). And, since Canada and New Zealand are recognized as having food safety systems comparable to the US, the verification activities for foods produced in Canada or New Zealand are greatly reduced. Yet, the FSVP Importer will still need to be identified in ACE at entry.

If you have any questions on the FSVP, please contact our office immediately.

CBP Forms 28 & 29 increasingly going to IOR (From NCBFAA)

Customs Form (CF) 28 (Request for Information) and CF 29 (Notice of Action) are increasingly going to the importer of record directly, but the broker is not receiving a courtesy copy as we historically have done. If you do receive a CF 28 or 29, please notify us IMMEDIATELY so we can advise you on what appropriate action to take. Please keep us informed! It's also important to note that the ACE Secure Data Portal allows authorized users to receive and respond to both of these notices.

Trade Enforcement Efforts Expected to Increase in Wake of Presidential Directive (From Sandler Travis)

President Trump has issued an executive order directing federal authorities to step up the collection of antidumping and countervailing duties and the prosecution of trade and customs law violations. Importers should act quickly to review their processes, practices, and entry data to identify potential trade compliance risks. Reporting and correcting any violations that may be discovered could mitigate negative consequences.

AD/CV Duties. In August 2016 the Government Accountability Office reported that \$2.3 billion in AD and CV duties went uncollected over the previous 15 years, that 20 importers accounted for about half that amount, and that about 95 percent of the total was associated with importers of goods from China. The GAO said that U.S. Customs and Border Protection was taking steps to improve AD/CV duty collections, such as revising bonding formulas and centralizing the management of bonds, but lacked key information that could aid those efforts. The report also noted the challenge posed by the United States' complex and retrospective AD/CV duty collection system. See related article below. For more info, please go to

<http://www.strtrade.com/news-publications-trade-enforcement-prior-disclosure-AD-CV-040517.html>

AD/CVD cases continue to increase

We continue to see petitions for the imposition of antidumping and countervailing duties on imports from People's Republic of China and the Socialist Republic of Vietnam. The latest are on of certain tool chests and cabinets. If you import from these countries, to avoid being assessed unexpected costs of ADD/CVD on your imports, we urge you to frequently check the list of Commerce investigations that can be found at

<http://enforcement.trade.gov/stats/inv-initiations-2000-current.html>

Alternatively, you can engage a service that monitors ADD/CVD cases for you. Their fees vary, but they are pricey. If you prefer to engage a service, please contact us for a referral.

TFTEA & EAPA require CBP to increase enforcement

The Trade Facilitation and Trade Enforcement Act and the Enforce and Protect Act, both of 2015, require an increased level of enforcement by CBP

in regards to AD/CVD evasion, products using forced labor in ANY step of the manufacturing process, and intellectual property rights (IPR) violations. It is HIGHLY important that importers of record take positive and proactive steps to insure your imported merchandise does not fall into one of these 3 categories. If you are not 100% percent sure your imported merchandise is compliant, please contact us. The penalties are severe and can even result in shutting down your import program. For more detailed information and a list of manufacturers with active “Withhold Release Orders”, please go to

<https://www.cbp.gov/trade/trade-community/programs-outreach/convict-importations>

Please visit our website at

www.lhcb.com

for additional and updated information and contact us with any questions.

Lee Hardeman	LeeH@LHCB.com	Direct: 404-477-3452
Sandy Cato	SandyC@LHCB.com	Direct: 404-477-3454
Mildred Barnes	MildredB@LHCB.com	Cell: 404-401-5950

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