

There must not be any financial conflicts of interest that influence the results of the verification activities set forth in paragraph (c)(5)(i) of this section, and payment must not be related to the results of the activity.

[80 FR 74340, Nov. 27, 2015, as amended at 81 FR 25327, Apr. 28, 2016]

**§ 1.512 What FSVP may I have if I am a very small importer or I am importing certain food from certain small foreign suppliers?**

(a) *Eligibility.* This section applies only if:

(1) You are a very small importer; or  
(2) You are importing certain food from certain small foreign suppliers as follows:

(i) The foreign supplier is a qualified facility as defined by § 117.3 or § 507.3 of this chapter;

(ii) You are importing produce from a foreign supplier that is a farm that grows produce and is not a covered farm under part 112 of this chapter in accordance with § 112.4(a) of this chapter, or in accordance with §§ 112.4(b) and 112.5 of this chapter; or

(iii) You are importing shell eggs from a foreign supplier that is not subject to the requirements of part 118 of this chapter because it has fewer than 3,000 laying hens.

(b) *Applicable requirements*—(1) *Documentation of eligibility*—(i) *Very small importer status.* (A) If you are a very small importer and you choose to comply with the requirements in this section, you must document that you meet the definition of very small importer in § 1.500 with respect to human food and/or animal food before initially importing food as a very small importer and thereafter on an annual basis by December 31 of each calendar year.

(B) For the purpose of determining whether you satisfy the definition of very small importer with respect to human food and/or animal food for a given calendar year, the relevant 3-year period of sales (and U.S. market value of human or animal food, as appropriate) is the period ending 1 year before the calendar year for which you intend to import food as a very small importer. The baseline year for calculating the adjustment for inflation is 2011. If you conduct any food sales in

currency other than U.S. dollars, you must use the relevant currency exchange rate in effect on December 31 of the year in which sales occurred to calculate the value of these sales.

(ii) *Small foreign supplier status.* If you are a importing food from a small foreign supplier as specified in paragraph (a)(2) of this section and you choose to comply with the requirements in this section, you must obtain written assurance that your foreign supplier meets the criteria in paragraph (a)(2)(i), (ii), or (iii) of this section before first approving the supplier for an applicable calendar year and thereafter on an annual basis by December 31 of each calendar year, for the following calendar year.

(2) *Additional requirements.* If this section applies and you choose to comply with the requirements in paragraph (b) of this section, you also are required to comply with the requirements in §§ 1.502, 1.503, and 1.509, but you are not required to comply with the requirements in §§ 1.504 through 1.508 or § 1.510.

(3) *Foreign supplier verification activities.* (i) If you are a very small importer, for each food you import, you must obtain written assurance, before importing the food and at least every 2 years thereafter, that your foreign supplier is producing the food in compliance with processes and procedures that provide at least the same level of public health protection as those required under section 418 or 419 of the Federal Food, Drug, and Cosmetic Act, if either is applicable, and the implementing regulations, and is producing the food in compliance with sections 402 and 403(w) (if applicable) of the Federal Food, Drug, and Cosmetic Act.

(ii) If your foreign supplier is a qualified facility as defined by § 117.3 or § 507.3 of this chapter and you choose to comply with the requirements in this section, you must obtain written assurance, before importing the food and at least every 2 years thereafter, that the foreign supplier is producing the food in compliance with applicable FDA food safety regulations (or, when applicable, relevant laws and regulations of a country whose food safety system FDA has officially recognized as comparable or determined to be equivalent

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to that of the United States). The written assurance must include either:

(A) A brief description of the preventive controls that the supplier is implementing to control the applicable hazard in the food; or

(B) A statement that the supplier is in compliance with State, local, county, tribal, or other applicable non-Federal food safety law, including relevant laws and regulations of foreign countries.

(iii) If your foreign supplier is a farm that grows produce and is not a covered farm under part 112 of this chapter in accordance with §112.4(a) of this chapter, or in accordance with §§112.4(b) and 112.5 of this chapter, and you choose to comply with the requirements in this section, you must obtain written assurance, before importing the produce and at least every 2 years thereafter, that the farm acknowledges that its food is subject to section 402 of the Federal Food, Drug, and Cosmetic Act (or, when applicable, that its food is subject to relevant laws and regulations of a country whose food safety system FDA has officially recognized as comparable or determined to be equivalent to that of the United States).

(iv) If your foreign supplier is a shell egg producer that is not subject to the requirements of part 118 of this chapter because it has fewer than 3,000 laying hens and you choose to comply with the requirements in this section, you must obtain written assurance, before importing the shell eggs and at least every 2 years thereafter, that the shell egg producer acknowledges that its food is subject to section 402 of the Federal Food, Drug, and Cosmetic Act (or, when applicable, that its food is subject to relevant laws and regulations of a country whose food safety system FDA has officially recognized as comparable or determined to be equivalent to that of the United States).

(4) *Corrective actions.* You must promptly take appropriate corrective actions if you determine that a foreign supplier of food you import does not produce the food consistent with the assurance provided in accordance with §1.512(b)(3)(i) through (iv). The appropriate corrective actions will depend

on the circumstances but could include discontinuing use of the foreign supplier until the cause or causes of non-compliance, adulteration, or misbranding have been adequately addressed. You must document any corrective actions you take in accordance with this paragraph (b)(4). This paragraph (b)(4) does not limit your obligations with respect to other laws enforced by FDA, such as those relating to product recalls.

(5) *Records*—(i) *General requirements for records.* (A) You must keep records as original records, true copies (such as photocopies, pictures, scanned copies, microfilm, microfiche, or other accurate reproductions of the original records), or electronic records.

(B) You must sign and date records concerning your FSVP upon initial completion and upon any modification of the FSVP.

(C) All records must be legible and stored to prevent deterioration or loss.

(ii) *Availability.* (A) You must make all records required under this subpart available promptly to an authorized FDA representative, upon request, for inspection and copying. Upon FDA request, you must provide within a reasonable time an English translation of records maintained in a language other than English.

(B) Offsite storage of records, including records retained by other entities in accordance with paragraph (c) of this section, is permitted if such records can be retrieved and provided onsite within 24 hours of request for official review. Electronic records are considered to be onsite if they are accessible from an onsite location.

(C) If requested in writing by FDA, you must send records to the Agency electronically or through another means that delivers the records promptly, rather than making the records available for review at your place of business.

(iii) *Record retention.* (A) Except as specified in paragraph (b)(5)(iii)(B) or (C) of this section, you must retain records required under this subpart for a period of at least 2 years after you created or obtained the records.

(B) If you are subject to paragraph (c) of this section, you must retain records

that relate to your processes and procedures, including the results of evaluations of foreign suppliers and procedures to ensure the use of approved suppliers, for at least 2 years after their use is discontinued (*e.g.*, because you have reevaluated a foreign supplier's compliance history or changed your procedures to ensure the use of approved suppliers).

(C) You must retain for at least 3 years records that you rely on during the 3-year period preceding the applicable calendar year to support your status as a very small importer.

(iv) *Electronic records.* Records that are established or maintained to satisfy the requirements of this subpart and that meet the definition of electronic records in § 11.3(b)(6) of this chapter are exempt from the requirements of part 11 of this chapter. Records that satisfy the requirements of this part, but that also are required under other applicable statutory provisions or regulations, remain subject to part 11.

(v) *Use of existing records.* (A) You do not need to duplicate existing records you have (*e.g.*, records that you maintain to comply with other Federal, State, or local regulations) if they contain all of the information required by this subpart. You may supplement any such existing records as necessary to include all of the information required by this subpart.

(B) You do not need to maintain the information required by this subpart in one set of records. If existing records you have contain some of the required information, you may maintain any new information required by this subpart either separately or combined with the existing records.

(vi) *Public disclosure.* Records obtained by FDA in accordance with this subpart are subject to the disclosure requirements under part 20 of this chapter.

(c) *Requirements for importers of food from certain small foreign suppliers.* The following additional requirements apply if you are importing food from certain small foreign suppliers as specified in paragraph (a)(2) of this section and you are not a very small importer:

(1) *Evaluation of foreign supplier compliance history—(i) Initial evaluation.*

Except as specified in paragraph (c)(1)(iii) of this section, in approving your foreign suppliers, you must evaluate the applicable FDA food safety regulations and information relevant to the foreign supplier's compliance with those regulations, including whether the foreign supplier is the subject of an FDA warning letter, import alert, or other FDA compliance action related to food safety, and document the evaluation. You may also consider other factors relevant to a foreign supplier's performance, including those specified in § 1.505(a)(1)(iii)(A) and (C).

(ii) *Reevaluation of foreign supplier compliance history.* (A) Except as specified in paragraph (c)(1)(iii) of this section, you must promptly reevaluate the concerns associated with the foreign supplier's compliance history when you become aware of new information about the matters in paragraph (c)(1)(i) of this section, and the reevaluation must be documented. If you determine that the concerns associated with importing a food from a foreign supplier have changed, you must promptly determine (and document) whether it is appropriate to continue to import the food from the foreign supplier.

(B) If at the end of any 3-year period you have not reevaluated the concerns associated with the foreign supplier's compliance history in accordance with paragraph (c)(1)(ii)(A) of this section, you must reevaluate those concerns and take other appropriate actions, if necessary, in accordance with paragraph (c)(1)(ii)(A). You must document your reevaluation and any subsequent actions you take in accordance with paragraph (c)(1)(ii)(A).

(iii) *Review of another entity's evaluation or reevaluation of foreign supplier compliance history.* If an entity other than the foreign supplier has, using a qualified individual, performed the evaluation described in paragraph (c)(1)(i) of this section or the reevaluation described in paragraph (c)(1)(ii), you may meet the requirements of the applicable paragraph by reviewing and assessing the evaluation or reevaluation conducted by that entity. You must document your review and assessment, including documenting that the

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evaluation or reevaluation was conducted by a qualified individual.

(2) *Approval of foreign supplier.* You must approve your foreign suppliers on the basis of the evaluation you conducted under paragraph (c)(1)(i) of this section or that you review and assess under paragraph (c)(1)(iii) of this section, and document your approval.

(3) *Use of approved foreign suppliers.* (i) You must establish and follow written procedures to ensure that you import foods only from foreign suppliers you have approved based on the evaluation conducted under paragraph (c)(1)(i) of this section (or, when necessary and appropriate, on a temporary basis from unapproved foreign suppliers whose foods you subject to adequate verification activities before importing the food). You must document your use of these procedures.

(ii) You may rely on an entity other than the foreign supplier to establish the procedures and perform and document the activities required under paragraph (c)(3)(i) of this section provided that you review and assess that entity's documentation of the procedures and activities, and you document your review and assessment.

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### **§ 1.513 What FSVP may I have if I am importing certain food from a country with an officially recognized or equivalent food safety system?**

(a) *General.* (1) If you meet the conditions and requirements of paragraph (b) of this section for a food of the type specified in paragraph (a)(2) of this section that you are importing, then you are not required to comply with the requirements in §§ 1.504 through 1.508. You would still be required to comply with the requirements in §§ 1.503, 1.509, and 1.510.

(2) This section applies to food that is not intended for further manufacturing/processing, including packaged food products and raw agricultural commodities that will not be commercially processed further before consumption.

(b) *Conditions and requirements.* (1) Before importing a food from the foreign supplier and annually thereafter, you must document that the foreign sup-

plier is in, and under the regulatory oversight of, a country whose food safety system FDA has officially recognized as comparable or determined to be equivalent to that of the United States, and that the food is within the scope of that official recognition or equivalency determination.

(2) Before importing a food from the foreign supplier, you must determine and document whether the foreign supplier of the food is in good compliance standing with the food safety authority of the country in which the foreign supplier is located. You must continue to monitor whether the foreign supplier is in good compliance standing and promptly review any information obtained. If the information indicates that food safety hazards associated with the food are not being significantly minimized or prevented, you must take prompt corrective action. The appropriate corrective action will depend on the circumstances but could include discontinuing use of the foreign supplier. You must document any corrective actions that you undertake in accordance with this paragraph (b)(2).

### **§ 1.514 What are some consequences of failing to comply with the requirements of this subpart?**

(a) *Refusal of admission.* An article of food is subject to refusal of admission under section 801(a)(3) of the Federal Food, Drug, and Cosmetic Act if it appears that the importer of that food fails to comply with this subpart with respect to that food. If there is no U.S. owner or consignee of an article of food at the time the food is offered for entry into the United States, the article of food may not be imported into the United States unless the foreign owner or consignee has appropriately designated a U.S. agent or representative as the importer in accordance with § 1.500.

(b) *Prohibited act.* The importation or offering for importation into the United States of an article of food without the importer having an FSVP that meets the requirements of section 805 of the Federal Food, Drug, and Cosmetic Act, including the requirements of this subpart, is prohibited under section 301(zz) of the Federal Food, Drug, and Cosmetic Act.