Note to Industry: Addressing Erroneous Inclusion on FDA’s FSVP Importer List

7/8/2020

Background: On a roughly quarterly basis, FDA posts the names of entities that have been identified on Customs Entry paperwork as FSVP importers. This list can be downloaded at the bottom of this page: https://www.fda.gov/food/importing-food-products-united-states/foreign-suppliers-verification-programs-list-participants. As of this writing, the list is sorted by state, and then by firm legal name, and the file contains the timeframe for which information is provided.

From time to time, companies have been surprised to see their names listed as FSVP importers. This document lays out the process to request details from FDA in order to understand how a company name/location wound up on the list.

If you don’t think you’re an FSVP importer:

At the web link above, FDA states “If you would like more information regarding entries for which you were declared as the FSVP importer, you can submit a Freedom of Information Act Request to request the publicly releasable data points for those entries for a related timeframe.” This document provides additional details on how to do this, and the information that should be provided by the inquiring firm in order to expedite a response from FDA.

• The company who feels they have been listed in error must file a Freedom of Information Act request. If the firm would like a 3rd party (e.g., an attorney) to make the request, the firm listed as the FSVP importer must grant permission to the 3rd party (e.g., on company letterhead) and this must accompany the request by the 3rd party.
• The FOIA request should include the dates/timeframe of interest (e.g., if you’re listed in a report that covers March – May 2020, this would be the timeframe of interest). Bear in mind that implementation of the FSVP rule began May 30 2017; FSVP for importers of fresh produce covered by the Produce Safety rule began July 26, 2018. The broader the timeframe of the FOIA request, the longer it may take FDA to respond.
• The spelling of the firm name in the FOIA request should exactly match the spelling on the FDA list (even if there are typos). It’s recommended to also include the correct spelling, as well as any alternate spellings, subsidiaries, DBAs etc.
• The FOIA request should also include the DUNS number, and/or location of the alleged FSVP importer. Otherwise, a company with multiple locations may receive data for all locations (and again, the more extensive the request, the more time it will take for the agency to respond).

This information is provided as a service to the industry. It is not legal advice and is subject to change. Contact FDA or an attorney with specific questions.
Expected timeframe for response: FDA has dedicated staff and established processes to handle these FOIA requests. You should expect a response in about one month, depending on the scope of the request.

What to expect from the FOIA response: The inquirer will receive 23 data points associated with the entry(ies) in which the firm was listed as the FSVP importer. This includes the filer, the port of entry, and other information that the firm can use to follow up with those parties to address the improper naming of the FSVP importer.

NOTE: if you determine that you were improperly listed as the FSVP importer, be aware that the published list will not change, because the list reflects the company reported as the FSVP importer at the time of entry. However, your investigation into the error will be helpful so that in the future, the FSVP importer will be entered properly. You should proactively contact the filer and alert them that the declared FSVP importer is not the true FSVP importer and that they should identify the correct FSVP importer moving forward. It’s recommended to keep documentation of your inquiry, and any follow up with the filer, in case you are notified by FDA of an FSVP inspection related to this entry.