



Supply Chain Transparency

Food and Beverage Standards and Regulation

Increased Supply Chain Regulation

Over the past few decades, the Food Sector has faced continued **increases in regulatory requirements** for compliance. Regulatory risk is, however, only one of the considerations this sector must evaluate. Increasingly, companies face risks to their **reputations, finances** and **strategic initiatives** associated with the food supply chain.

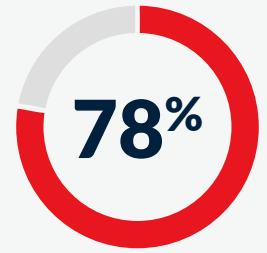
These risks are wide-reaching and can include: negative publicity about the use of forced labor, losses from outbreaks of food-borne illnesses, costly disruptions caused by climate change, natural disasters, pandemics and international conflicts.

New Regulation Legislation

The **2011 U.S. Food & Drug Administration (FDA) Food Safety Modernization Act** was created to strengthen the food safety system.² In 2022, the USDA (U.S. Department of Agriculture) announced a framework to shore up critical supply chains, as well as **address long standing structural challenges and disruptions** that were intensified during the pandemic and Russia's War in Ukraine. The new framework is intended to make food supply chains more resilient, competitive and fair.

In response to ongoing concerns about preventable public health risks, the FDA introduced the **Food Safety Modernization Act (FSMA) Rule on Sanitary Transportation of Human and Animal Food (aka the 'Rule')** to advance the FDA's efforts to protect all foods from contamination during transportation.³

In 2015, revelations about forced labor in Thailand's shrimp harvesting industry caused U.S. officials and human rights activists to encourage consumers to boycott the products.⁴ A 2019 report illustrates that moderate advances in eliminating the worst forms of slave labor have been made, in part due to the criticism from the U.S. government and its consumers.⁵ Globally, consumers are consistently demanding more transparent, sustainable and ethical supply chains in consumer goods, including common goods like coffee and chocolate. **A 2021 global study found that 78 percent of consumers prioritize buying goods from companies that meet their expectations for proven sustainable, ethical business practices.**⁶



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The Business Impact of Food Contamination

Despite the potential negative effects on companies, these poor practices are still prevalent. According to data published by the Center for Disease Control and Prevention, about 48 million people (1 in 6 Americans) get sick, 128,000 are hospitalized and 3,000 die each year from foodborne diseases.⁷

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Furthermore, supermarket chains and restaurants continue to see food poisoning incidents from contaminated produce. One study showed that such incidents **can cost organizations up to \$2.2 million** in loss of business, fines and legal defense fees.⁸





Types of Businesses Subject to the FMSA Rule

Compliance deadlines for the Rule, which was finalized in April 2016, vary based on the organization type and size (most eligible businesses faced a 2018 or 2019 deadline). The requirement affects businesses with **supply chains that utilize refrigeration** or cold storage.

The Rule also has **extraterritorial reach**, impacting foreign businesses that ship food directly by car or rail (from Canada or Mexico), ship or air, then transfer the intact containers onto a truck or train for transportation, distribution or consumption in the U.S.⁹

Any company involved in **transporting human and/or animal food** to the U.S. is subject to the Rule when said food is sold or consumed in the United States. The Rule applies to:



Brokers have the same responsibility as shippers, but there are a few exemptions. The Rule **does not apply to transportation by air within the United States**. It also **does not apply to exporters who ship food through the United States via cars or trains**, if the food does not enter the U.S. for distribution.

The FMSA Rule Impacts Both Large and Small Businesses



Large businesses that are not “otherwise excluded from coverage” had to have reached compliance by 2018.



Smaller businesses needed to comply by 2019. The Rule defines small businesses as:

- Employing less than 500 employees
(*other than motor carriers who are also not shippers or receivers*)
- Carriers with less than \$27 million in annual receipts

With this legislative mandate, and the aim of achieving higher rates of compliance, the FDA has greater enforcement authority, including:

- Comprehensive, science-based preventative controls across the food supply
- Inspections
- Records access
- Importer accountability
- Mandatory recall authority for all food products

“At each stage of the chain, a new rule will apply: The only acceptable products are those with a clear, comprehensive provenance.”¹⁰

Steve New

Operations and Supply Chain Management teacher at University of Oxford
Saïd Business School and Hertford College fellow

Regulation Requirements for Food Importers

Food importers must also comply with the **FDA FSMA Rule on Foreign Supplier Verification Programs (FSVP)**.⁹ Importers are defined by the FDA as “U.S. owner or consignee of a food offered for import into the United States”.¹¹

The definition covers **human and animal food being brought into the U.S.** from a foreign country for trade or sale. Importers are required to develop, maintain and follow a FSVP for each food imported and for each supplier associated with that food.

These regulations highlight the growth and complexity in the food industry's supply chain. The supply chain is no longer limited to the first-tier supplier, the manufacturer or the distributor. A compliance chart to help companies determine if they are subject to the FSVP is available.¹²

The FSVP Preventative Controls include:

Compliance Status Review	Perform due diligence on both the food imported and the foreign supplier.
Hazard Analysis	Analyze the potential hazards related to each food.
Verification Activities	Conduct intermittent sampling/testing of foreign supplier products, visit foreign suppliers for onsite audits and review food safety records.
Corrective Actions	Review complaints and take corrective steps, including investigation into the causes of adulteration or misbranding and/or reviewing the FSVP processes.
Periodic Reassessment	Evaluate your FSVP program effectiveness every three years.
Importer Identification	Obtain D&B DUNs number and provide the filing for entry with Customs and Border Protection.
Recordkeeping	Track and maintain all records produced.

Increase in Human Rights Reporting in the Food Supply Chain

While the FSVP is limited to businesses that import food into the U.S. for consumption, businesses across the food sector should be aware of other key regulations. Regulations require organizations to understand the environmental and human rights impacts of their supply chains, as well as ensure they meet the due diligence, monitoring and reporting requirements.

In 2012 the U.S. Federal Acquisition Regulation was amended by Executive Order (13627) to “strengthen the efficacy of the Government’s zero tolerance policy on trafficking in persons by Federal contractors and subcontractors in solicitations, contracts and subcontracts for supplies or services (including construction and commercial items).” ¹³



Combating Forced Labor in the Food Industry

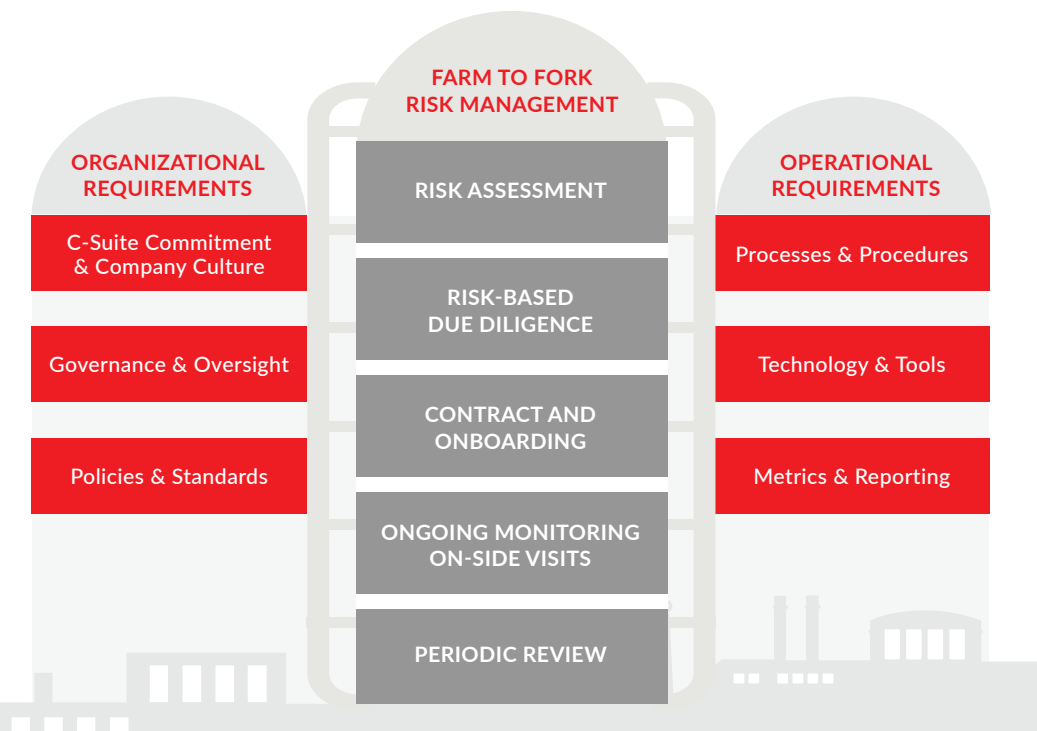
Increasingly, companies also must consider the **risk of forced labor** in their organizations and supply chains. For instance, the **California Transparency in Supply Chains Act** requires companies to make public disclosures about their efforts to eradicate slave labor and human trafficking in their supply chains. The law applies to retailers and manufacturers doing business in California with annual worldwide gross receipts of more than \$100 million.¹⁴

Likewise, the **UK Modern Slavery Act** requires any business that provides goods or services in the UK, and has an annual turnover of **£36 million or more**, to disclose the steps they are taking to address modern slavery risk in their organization and supply chains.¹⁵

Starting in 2023, Germany will enforce its new **Supply Chain Act**, which requires companies with over 3K employees (progressing in 2024 to include companies with more than 1K employees) to take responsibility for ethical issues in their supply chains. Inability to meet the requirements of the law will result in hefty fines.¹⁶

Arguably, companies in the food sector that are identifying where their food and ingredients are sourced from should be able to start identifying the areas within their business and supply chain where there may be a risk of forced labor or modern slavery.

Supply Chain Mapping will enable them to develop their due diligence processes in line with the identified risks.



Supply Chain Risk Management Tools and Procedures

Every company in the food sector affected by the Rule should ensure they address the following issues as part of their compliance program:

Strategic Use of Technology

Blockchain is already showing great promise for helping to identify and manage supply chain risk. Automated monitoring that takes advantage of machine learning and data visualization also improves visibility into emerging risks in near real time.

Supply Chain Mapping

Supply chain mapping can help companies better understand potential compliance vulnerabilities to mitigate costly food safety and quality failures.

Risk Assessment


In addition to analyzing industry-related trade risks and conducting pre-onboarding risk assessments for new suppliers, companies can implement on-site verification for Tier-1 suppliers—particularly those deemed high risk.

Compliance Status Reviews for all Tier-1 Suppliers

Conducting due diligence that checks against sanctions and PEPs, adverse media, industry and company data, along with ongoing monitoring, can help companies spot emerging compliance risks sooner.

Record-keeping

Maintaining an audit trail of due diligence investigations can help companies demonstrate compliance intent and to capture an historic view of supplier risk.

A group of business professionals, including a man and a woman, are seated around a table in a meeting. They are looking at documents and laptops. A quote is overlaid on the image.

“Farsighted organizations are directly addressing new threats and opportunities presented by the question, ‘Where does this stuff come from?’¹⁷”

Steve New

Operations and Supply Chain Management teacher at University of Oxford
Saïd Business School and Hertford College fellow

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