June 2009

New USDA Food Safety and Inspection Service (FSIS) requirements

Beginning on June 22, 2009, importers of food products that contain small amounts of meat or poultry will not be granted an import permit by the USDA Animal and Plant Health Inspection Service (APHIS) unless a determination is first made by FSIS that the meat, poultry, or egg product ingredient was prepared under specific conditions that will ensure that these ingredients are not adulterated. Once the determination has been made, food products that contain only a small amount of a meat, poultry, or egg product ingredient are no longer subject to the jurisdiction of FSIS and are then subject to the jurisdiction of the Food and Drug Administration.

Beginning on June 22, the following two steps will apply to products containing a small amount of meat or poultry products:

1. The meat or poultry ingredient must originate from an approved source, i.e., must be prepared under FSIS inspection or prepared in a certified establishment in an equivalent foreign inspection system.
2. APHIS restricts some products from entering the United States because of animal disease conditions in the country of origin. Therefore, it will continue to be necessary to contact the APHIS Veterinary Services, National Center for Import and Export, for information on restrictions related to animal diseases and to obtain a permit from APHIS. APHIS regulates imports under statutory authority of the Animal Health Protection Act to ensure that they do not pose a risk to U.S. animal health, and issues a veterinary permit to import meat, poultry, or processed egg products into the United States. An application is made through USDA VS Form 16-3. There are some countries that have no animal disease concerns and therefore do not require an APHIS permit. Nevertheless the product must still originate from equivalent countries and establishments certified to export to the United States.

For those products for which a new permit is being sought after June 22, APHIS will not approve the permit until the importer provides assurance for food products that contain a small amount of meat or poultry that the meat or poultry ingredient was produced from an approved source (i.e., prepared under either FSIS inspection in the United States or from a certified establishment from a country approved as having a system equivalent to that of the United States). If you need further information, please contact our office.

ISF bond amount may be more than $5000 (From NCBFAA)

CBP indicated at a meeting of the Commercial Operations Advisory Committee (COAC) that ISF bond amounts and penalty mitigation guidelines will be announced soon. In several conversations, CBP has indicated that the previously discussed $5,000.00 limit of liability for an ISF single transaction bond has not been officially confirmed and may be adjusted during the internal review process. Additionally, as discussed at the NCBFAA Annual Conference, CBP is advising that an ISF Importer will be liable for liquidated damages for each incorrect transmission. Each ISF amendment/correction constitutes a separate transmission. CBP believes that this interpretation is consistent with the language of the final rule and the FAQ's previously published. This is contrary to the widespread belief that an ISF Importer's liability would be limited to $5,000 per ISF filing. Please remember that an ISF bond will not be required until January 2010. We will update you as CBP publishes their final rulings.

CPSC won't delay effective date for tracking labels on children's products
(From our friends at Sandler Travis)

The effective date for compliance with the statutory requirement for tracking labels on all children's products remains Aug. 14, 2009, after an indecisive vote by the Consumer Product Safety Commission on a request for a delay. As a result, manufacturers of children's products must place permanent distinguishing marks on those products and their packaging that enable the identification of the manufacturer or private labeler, the location and date of production, and certain other information. "Children's products" are defined in the Consumer Product Safety Improvement Act as consumer goods designed or intended primarily for children 12 years of age or younger. Importers should act now to ensure compliance beginning with all imports on and after Aug. 14.

Proposal to increase Harbor Maintenance Fee by 350%
(From David Murphy of Grunfeld Desiderio)

The recently introduced Making Opportunities Via Efficient and More Effective National Transportation (MOVEMENT) Act of 2009 (HR 2355) proposes to raise the Harbor Maintenance Fee (HMF) from 0.125% to 0.4375%. If enacted into law, the effect of this fee increase could be significant. For example, on imported merchandise valued at $100,000, the HMF would jump from $125 to $437.50. There is currently no cap on the amount of HMF payable and the new legislation does not propose to create one.

The current legislation was first proposed in 2008 and seeks to increase the rate of the HMF and expand its application. HMF has been assessed on merchandise arriving via ocean carrier at 0.125% since the mid-1980's. If passed, the Act would increase the fee to 0.4375%. In addition, goods arriving after unloading at a foreign port in Mexico or Canada would be assessed a fee of 0.3125% when entered into the U.S. (Goods originating in Canada or Mexico are exempt.) This could cause foreign goods arriving at in-land and land-border ports which were previously exempt from the HMF to be subject to the increased fee structure. We urge you to contact your congressional delegation and express your views.

Please contact us with any questions.

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