

Decisions

National Food Safety Authority

Decision of Board of Directors No. 9 of the Year 2021

On

the Handling of the Imported Food Consignments Subject to Temporary Release

Board of Directors (BOD)

After reviewing the Constitution;

Law No. (118) of the Year 1975 on Import and Export and the executive regulations implementing the law,

Law on the National Food Safety Authority (NFSA) enacted by Law No. (1) of the Year 2017,

Law No. (207) of the Year 2020 on the Enactment of the Law on Customs and the Executive Regulations Implementing the Law,

Prime Minister's Decree No.(412) of the Year 2019 on the Enactment of the Executive Regulations Implementing the Law on NFSA,

Prime Minister's Decree No.(1296)of the Year 2020 on the Reconstitution of NFSA/BOD,

NFSA/BOD Decision No.(2) of the Year 2020 on Registration of Conformity Assessment Bodies Issuing Certificates of Conformity (COC) for Imported Food Consignments,

NFSA/BOD Decision No. (6) of the Year 2020 on the Technical Regulations Governing Food Import Licensing,

NFSA/BOD Decision No. (7) of the Year 2020 on the Risk-Based Food Import Control System, and

The approval of NFSA/BOD in the meeting held on November10, 2021

Decided the following:

(Article I)

Definitions

The following terms shall, in the application of the provisions of the present Decision, have the meanings set forth next to each:

“**NFSA**” shall mean National Food Safety Authority.

“**Food Handling**” shall mean one or more operations of food production, manufacture, offering or displaying for sale, storage, preserving, wrapping, transportation, delivery, importation, exportation, or the licensing or approval for any of these activities.

“**Importer**” shall mean a natural or legal person in whose name a Customs Declaration is registered for the food imports requested to be released after paying an import duty or released according to other customs systems, and who is responsible for meeting import regulations.

“**Party Concerned**” shall mean a food establishment operator (FBO) and/or the person who leases to a third party for storage of food commodities.

“**Food Consignment**” shall mean one or more food commodities that are usually covered by one certificate in accordance with the guidelines issued by the Codex Alimentarius Commission (CAC).

“**Food Safety and Quality Requirements**” shall mean the technical regulations on food safety and quality requirements issued by NFSA with a view to ensuring compliance of food, in accordance with the provisions of Law No. (1) of the Year 2017 and the Executive Regulations implementing this law, and with the applicable international food standards, including standards issued by CAC and approved by NFSA.

“**Risk-Based Sampling and Inspection System**” shall mean an approach followed by NFSA for dealing with food imports through applying a sampling system appropriate to the potential risk level of the food imports at a rate ranging between 2% and 100% upon arrival at the customs points of entry of the Arab Republic of Egypt.

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“Clearance Channel” shall mean a decision taken by NFSA on the customs release methodology determined for dealing with imported food consignments based on the determination of risk level of such consignments, in accordance with the information provided in a pre-border notification.

“Temporary Release of Imported Food Consignment” shall mean release of an imported food consignment provided that the consignment is held by NFSA and in the custody of food importer without the possibility to be handled in the Egyptian market pending an official notification from NFSA upon completion of compliance verification procedures determined by NFSA.

“Food Consignment Subject to Temporary Release” shall mean an imported food consignment selected as part of the sampling protocol, in accordance with the risk-based food import control system issued by NFSA/BOD Decision No. (7) of the Year 2020 regarding the red and orange channels, to verify compliance and conduct tests.

“Compliance Verification” shall mean measures and procedures issued by NFSA to ensure that the imported food consignments are in conformity with food safety and quality requirements, including sampling and laboratory tests.

“Hazard” shall mean any physical, biological, chemical or radiological agent in food.

“Holding” shall mean NFSA’s measures to hold a food in a location specified by NFSA, until it is ensured that such food complies with the conditions and rules provided for the law and the executive regulations implementing the law or the decisions issued by NFSA.

(Article 2)

Scope

1. This Decision shall apply to imported food consignments subject to NFSA/BOD Decision No. (7) of the Year 2020 after completing customs procedures in accordance with the applicable regulations in the following cases:
 - a) Imported food consignments to which the orange channel is assigned, and that are selected according to the risk-based sampling and inspection system to verify compliance as part of the random sampling conducted at the customs point of entry;
 - b) Imported food consignments to which the red channel is assigned according to the risk-based sampling and inspection system to verify mandatory compliance, including sampling conducted at the customs point of entry.
2. This Decision may not apply to the importer breaching the obligation in respect of any other food consignment transported and stored under temporary release within the 12 months preceding the delivery of the consignment required to be transported under temporary release, or in case a final court ruling has been issued in respect thereof, a food consignment is not re-exported, or the non-compliant consignment is not destroyed as decided by NFSA.

(Article 3)

The Importer's Obligations to the Imported Food Consignments Subject to Temporary Release

It is prohibited to handle imported food consignments subject to temporary release before NFSA decides the compliance thereof. The importer or the legal representative thereof shall comply with all the rules, procedures, controls and requirements set by NFSA, and in particular:

- a) Provide all information and documents related to the imported food consignment, including documents issued by the competent authority or inspection and conformity bodies, or other documents proving that the consignment complies with food quality and safety requirements if so requested by NFSA;

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- b) Not to conceal information or data, or provide incorrect information or data, particularly related to the food storage facility and operators thereof, the storage conditions and/or the handling of imported food consignments during the period such consignments are subject to compliance verification conducted by NFSA in accordance with the provisions of temporary release specified in this Decision, or any decisions or rules issued by NFSA;
- c) Give an undertaking to be fully responsible for the imported food consignment during the transportation and storage thereof, and not to break seals, as well as to keep all parts of the consignment intact, or not to dispose of during the holding period, pending the release of the final results;
- d) Transport and store the imported food consignments by means and methods that ensure the safety and quality, and not to dispose of consignments or any part thereof;
- e) Store the imported food consignments in facilities suitable for the nature of the imported consignment (dry, chilled, frozen), having a food handling license and meeting the technical regulations issued by NFSA in this regard;
- f) Notify NFSA of any changes to the food storage facility that may affect the fitness of the food consignment for human consumption while being subject to temporary release before issuing the compliance decision, and taking the appropriate decision by NFSA;
- g) Ensure that storage capacity of the food storage facility to which the imported food consignment is transported is sufficient to accommodate such consignment transported thereto;
- h) Use the available technological means and techniques determined by NFSA in controlling transport and storage operations during the holding period;

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- i) If the importer stores imported food consignments in third parties' warehouses, and such consignments are subject to the provisions of temporary release, the operator of warehouse wherein the consignment is stored shall undertake to be fully responsible for the storage controls issued by NFSA, and not to dispose of consignments or part thereof, whether to the importer of the imported food consignments or to third parties unless the compliance decision is issued by NFSA;
- j) Allow NFSA to take samples from the imported food consignment for the purposes of compliance verification in accordance with the food safety and quality requirements, and to monitor the holding;
- k) Apply the rules, procedures, and requirements issued by NFSA in respect of imported food consignments, implement NFSA's decisions regarding the destruction (in case of non-compliance) or re-export of consignments, and notify NFSA of what has been conducted in this regard;
- l) Pay the fees and charges for services, costs and logistical arrangements related to the imported food consignments, including all procedures for verifying compliance with food safety and quality requirements issued by NFSA; and
- m) Store the imported food consignments in such a way that such consignments are physically separated from any food consignments of the same type to be stored within the food storage facility.

(Article 4)

NFSA shall set and apply the rules, procedures, controls, and requirements in respect of the temporary release provisions, and in particular:

- a) Verify that the food consignment subject to temporary release complies with food safety and quality requirements in accordance with the risk-based principles;

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- b) Notify the importer of the compliance verification scope of the food consignment subject to temporary release, including the sampling and inspection requirements, and required laboratory tests;
- c) Draw up an official record for the imported food consignment being held;
- d) Take the procedures to monitor the transportation, storage and holding of the imported food consignments subject to temporary release, inspect such consignments, and verify the presence of all varieties and quantities as well as the compliance with the storage requirements and conditions issued by NFSA in particular the appropriate storage temperature;
- e) Notify the party concerned of the inspection results of the imported food consignment; release the imported food consignment if it is proven that such consignment complies with the food safety requirements and conditions issued by NFSA; and notify the competent customs office to make a final release of the consignment; and
- f) In the event of non-compliance, apply the provisions set forth in Article 5, Item (e) of this Decision, and when determining the extent of compliance of the imported food consignments subject to temporary release, consider all the information provided by the importer in particular the results of laboratory tests to verify compliance according to specific criteria based on risks identified by NFSA.

(Article 5)

(Temporary Release Procedures of Imported Food Consignments)

- a) The importer or the legal representative thereof shall transport and store the imported food consignments subject to temporary release within 72 hours of passing the documentary and visual inspections. The importer may store an imported food consignment inside the customs area in accordance with the requirements and decisions issued by the Egyptian Customs Authority in this regard pending the release of the final inspection result, issuance of COC, and the fulfillment of the provisions set forth in Article 3 of this Decision.
- b) NFSA's office at the port from which the imported food consignment is transported shall:
 - Take representative samples from the imported food consignment in accordance with a risk-based sampling and inspection system issued by NFSA to verify compliance as part of random or mandatory sampling;
 - Notify the competent customs office of the decision in respect of the temporary release of the imported food consignment outside the customs area, and that the final release of the consignment may not be granted unless being notified of the results of the final inspection stating the compliance of the consignment;
 - Take all undertakings from the party concerned or the legal representative thereof not to break seals, or to keep all parts of the consignment intact; record the plate numbers, drivers' names, and identity cards; use lead-seal,

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and stamp with the seal of the NFSA's inspectors at the port from which the food consignment is transported, and the signer of the undertaking shall assume liability in event of violations;

- Notify NFSA's office in whose area the food storage facility, to which the imported food consignment is transported, is located of all the data to take the procedures for transporting, storing and receiving the consignment, ensure that the food safety requirements and controls are met in respect of the means of transportation, the food storage facility, and the imported food consignment pending the release of final results, monitor the arrival of the consignment as well as all the procedures taken in respect thereof, and take all legal procedures in the event of any problem or violation; and
- Transport imported food consignments by appropriate means depending on the nature of the imported food, e.g., the frozen foods shall be transported by deep-freeze trucks at least (-18 °C), and in all cases, the trucks shall be sealed and stamped with the seal of NFSA's inspectors at the port, and plate numbers and drivers' names shall also be recorded.

c) NFSA's office in whose area the food storage facility, to which the imported food consignment is transported, is located shall:

- Follow up the holding procedures with NFSA's office at the port from which the food consignment is transported, receive the food consignment, verify the presence of all varieties and quantities subject to the provisions of temporary release, and that such varieties and quantities match the attached documents, ensure the integrity of the seals before breaking them by NFSA's office, verify the storage conditions of the food consignment, in particular: the appropriate temperature based on the NFSA's requirements for the purposes of compliance verification in accordance with the food safety and quality requirements, and draw up holding record of the imported food consignment pending the receipt of a compliance notification from NFSA.

d) NFSA shall release the imported food consignment if proven to be in compliance with the food safety requirements and conditions, and shall notify the competent customs office.

e) Upon receiving notification of rejection of the imported food consignment, the following shall be taken into account:

- If the imported food consignment is inside the customs area, the competent customs office shall be notified thereof in order to take the necessary action towards the re-export or destruction of rejected consignments in accordance with the regulating provisions in this regard.
- If the imported food consignment is stored outside the customs area, NFSA's office supervising the storage of the held consignment shall be notified thereof, and the importer shall transport the imported food consignment to the port from which such consignment will be re-exported within a period of fourteen working days from the date of being notified of the final results, and upon the request of

the importer unless such consignment is destroyed under the supervision of NFSA and the representative of the Customs Authority.

- NFSA's office in whose area the imported food consignment is stored, the port of arrival, and the port from which the consignment will be re-exported shall be notified of all the data of the consignment intended to be re-exported, when a re-export request is submitted by the party concerned.
 - NFSA's office at the port to which the imported food consignment is transported, and from which the consignment will be re-exported shall be notified thereof in order to receive the consignment, break seals, ensure that all varieties, quantities, weight and numbers of consignments match the consignment documents, and complete re-export procedures, and in the event of a shortage in quantities, legal actions shall be taken against the importer.
 - Both the port of arrival and the storage destination shall receive a copy of the re-export bill of lading.
- f) The importer has the right to file a grievance before NFSA against any decision of non-compliance, and NFSA may consider and decide on the grievance, as the case may be.

(Article 6)

(Dealing with Non-Compliant Imported Food Consignments)

NFSA shall determine the mechanisms for dealing with the imported food consignments proven not to comply with food safety and quality requirements issued by NFSA, may use risk-based assessment methodology, and shall issue the decisions in proportion to the severity of non-compliance.

Food consignments may not be permitted to be handled in the Arab Republic of Egypt if proven to pose a threat to the health of the consumer, and in this case the importer shall deal with the non-compliant consignment, whether by destruction or re-export as decided by NFSA.

(Article 7)

(The Failure of the Importer to Fulfill the Obligations to the Food Consignments Subject to Temporary Release)

In case the importer fails to comply with the requirements of temporary release in accordance with the provisions of this Decision, and violates all the undertakings of being fully responsible for the consignment, in particular breaking seals, not keeping all parts of the consignment intact, or disposing of before the final results are released, NFSA shall take the appropriate measures in respect of the consignment subject to temporary release, and the importer shall incur all related costs within a period not exceeding fourteen working days from the issuance of NFSA's decision or notification of the Prosecution.

(Article 8)

(Suspension or Revocation of Import Food License)

1. NFSA shall suspend an import food license, in the event of violating the provisions of this Decision for a period not exceeding one year from the date of the issuance of NFSA's decision based on the severity of the violation, take legal actions, and apply the administrative measures as deemed appropriate by NFSA, in particular in the event of:
 - a) Failure to implement the decisions of the Grievance Committee to conduct visual or technical treatment according to the period determined by NFSA;
 - b) Absence of the importer in order to complete the import procedures after the release of the final results of rejection within a period exceeding one month from the date of approval of the final results;
 - c) Violation of the procedures, controls, conditions and rules issued by NFSA in respect of the transportation, storage and the holding of the imported food consignment; and
 - d) Importer's failure to implement the decisions issued by NFSA in respect of the re-export or destruction according to the period determined by NFSA.
2. NFSA shall revoke the food import license, in case of violating the provisions of this Decision, take legal actions, and apply the administrative measures as deemed appropriate by NFSA, in particular in the event of:
 - a) Importer's failure to pay NFSA's dues of fees and services charges, costs or logistical arrangements related to the imported food consignment, including all procedures to verify compliance with the food safety and quality requirements issued NFSA;
 - b) Absence of the held food consignment transported outside the customs area in the place of storage stated in the storage capacity letter and the transportation and storage declaration signed by the importer and in which the storage address is recorded, when monitoring the consignment transported outside the customs area whether when a product is subject to treatment or resampling or release;
 - c) The importer changing part of the contents of the consignment by repacking the consignment in containers that are different from the imported original containers released from customs to be held by NFSA;
 - d) The importer not keeping all parts of the imported food consignment subject to the provisions of this Decision intact or disposing thereof; and
 - e) Deliberately destroying, circumventing, tampering with or disrupting the available technological means and techniques determined NFSA to be used in controlling the transportation and storage of the imported food consignment subject to the provisions of this Decision.
3. NFSA shall revoke the importer's license, in case of recurrence of the violations specified in the text of Paragraph 1 of the present Article as decided by NFSA in

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this regard, and in accordance with the facts presented in the cases of violations attributed to the importer.

- 4 . Suspension and revocation decisions may, in accordance with the provisions of the present Article, not be issued except after the importer to whom the violation is attributed is notified via NFSA’s e-mail registered or via one of the electronic means determined by NFSA, to submit the importer’s defenses within fifteen days from the date of being notified, and this is deemed to be an official notification provided that a committee shall be formed by a decision of the Chairman of BOD to determine the extent of the importer's responsibility in the violations attributed thereto.

(Article 9)

This Decision shall be published in the Supplement of the Official Gazette (Al-Waqae AlMisriyya), and shall enter into force on the day following date of publication. The provisions of Article 3, Item “h” shall come into force after six months from the date of publication of this Decision. BOD may renew the period for similar periods.

Any provision contrary to the provisions of this Decision shall be repealed.

Dated: 19/12/2021

Chairman of the Board of Directors

Prof. Dr. Hussein Mansour