

**The Regulation of the Surveillance Management On
the Quality Safety Of Cross-border E-commerce Imported Food
In the Form of Online Free-trade Mode
(Opinion Soliciting Draft)**

CHAPTER I GENERAL PROVISIONS

Article 1 Objective

This regulation is formulated with a view to assuring the quality safety of cross-border E-commerce imported food and formalizing the surveillance management of the online free-trade mode in accordance with the existing legal documents *The Food Safety Law of the People's Republic of China*, *Law of People's Republic of China on the Entry and Exit Animal and Plant Quarantine*, *Law of the People's Republic of China on Import and Export Commodity Inspection*, *Opinions of the State Council on Accelerating the Development of E-commerce to Speed Up New Economic Power* (No.24 2015 promulgated by the State Council General Office) , *Guidance of the State Council on Promoting the Healthy and Rapid Development of Cross-border E-commerce* (No. 46 2015 promulgated by the State Council General Office) and *Opinions of AQSIQ on the Further Development of Inspection and Quarantine to Promote the cross-border E-commerce* (No.202 2015 promulgated by AQSIQ).

Article 2 Scope

This regulation applies to the surveillance management of the quality safety of cross-border E-commerce imported food in the form of online free-trade mode (hereinafter referred to as “online free-trade import”).

“online free-trade import” is defined as the cross-border E-commerce import mode, which requests that cross-border e-commerce operators shall make individual packages in terms of consumer orders before delivering to domestic consumers, namely, all the imported shall be declared in the form of cross-border E-commerce regardless of consumer orders at the time of entry; all the imported shall be transported to a special custody area for storage in the event that individual packages are not in conformity with the consumer orders at the time of entry.

The inbound commodities sent by international express or by post are excluded by this regulation.

Article 3 Liability Subject

The business entities that operate online free-trade import business shall abide by the related laws and regulations in China, ensuring that the quality of the imported food meets the requirements of Chinese laws and the national food safety standards.

The business entities that operate online free-trade import business include the companies that operate online free-trade import (hereinafter referred to as “trading enterprise”), the third-party platform companies of online free-trade import (hereinafter referred to as “platform enterprise”), the logistics and warehousing companies of online free-trade import (hereinafter referred to as “logistics and warehousing companies”).

Article 4 Regulation Subject

AQSIQ is entitled to conduct the inspection and quarantine surveillance of online free-trade import.

The local exit-entry inspection and quarantine institution is entitled to conduct the regional inspection and quarantine surveillance of online free-trade import.

Article 5 Regulatory Principles

The exit-entry inspection and quarantine institutions assume the responsibilities of supervising the business entities of online free-trade import food, managing records and supervising the trade and the quality safety of online free-trade import.

CHAPTER II OBLIGATIONS OF BUSINESS ENTITIES

Article 6 General Obligations of the Trading Enterprise

The trading enterprise shall abide by the related Chinese laws of online-purchased food, establish a well-organized system to supervise food safety and designate special staff to supervise food quality, which aims to ensure food quality meets the requirements of the related laws and the national standards of food safety. In accordance with the regulations, the trading enterprise that is required to handle production permit or make records shall obtain food business license or filing documents. The enterprise shall make the records in the inspection and quarantine institution in accordance with the regulations.

The trading enterprise is not allowed to import the following food in the form of online free-trade import.

- 1. The commodities that are forbidden to enter China in accordance with *Law of People's Republic of China on the Entry and Exit Animal and Plant Quarantine*;**
- 2. The animal and plant derived food that is not approved by the exit-entry**

inspection and quarantine institution;

3. The food that is forbidden to enter China in accordance with the other regulations and the notice promulgated by AQSIQ.

The trading enterprise shall ensure that the online free-trade import meets the following requirements.

1. The food shall be on *the List of the Imported Food Supplied by the Overseas Registered Food Manufacturers* and shall be supplied by the overseas registered food manufacturers.
2. Health food, GM food, the food with new raw materials or ingredients that contain new raw materials or the food free of national food safety standards shall register, record and adopt safety assessment.
3. The food shall be proved qualified by the animal and plant quarantine bureau before its entry into China if requested.

Article 7 General Obligations of the Platform Enterprise

The platform enterprise shall establish and implement a series of management systems that include registration and examination, information auditing of food for sale, emergency response to food safety, complaint treatment and consumer protection, all of which aims to ensure food safety on the platform. The platform enterprise shall keep records in the entry-exit inspection and quarantine departments.

The platform enterprise shall make the real-name registration for all the trading enterprises on the platform in an effort to assume its responsibilities of food safety management. The platform enterprise shall require those license-holders to have the license checked.

The platform enterprise shall establish the records of all the trading enterprises

on the platform. All the relevant information shall be audited and archived, which includes the profile of the enterprise, the range of services, the brand, the manufacturers and the enterprise qualification.

The platform enterprises that undertake the online free-trade import business shall obtain the license or filing documents, and shall abide by the business-related clauses in accordance with this Regulation.

The platform enterprises registered overseas shall appoint a domestic legally qualified company as the agent, who shall assume the corresponding legal liabilities.

Article 8 General Obligations of the Logistics and Warehousing Companies

The logistics and warehousing companies shall establish and implement the management systems of logistics, storage and traceability. The companies shall make the records in the entry-exit inspection and quarantine departments.

Article 9 Records of the Business Entities

The business entities of the cross-border E-commerce shall make the records in the entry-exit inspection and quarantine departments by means of the record management system for the Import and Export Businesses on Imported Food promulgated by AQSIQ. The platform enterprises are allowed to make the records for the trading enterprises and the logistics and warehousing companies.

The business entities of online free-trade import registered overseas shall appoint a domestic agent to make the records.

Article 10 Records of Food Information

The trading enterprises shall ensure the online free-trade import comes from the legal overseas manufacturers and make the records of food information in the entry-exit inspection and quarantine departments by means of the record management system for the Import and Export Businesses on Imported Food promulgated by AQSIQ.

Article 11 Commitments of Quality Safety

The trading enterprises shall make overt commitments of quality safety of the commodities on the home page of the self-established websites or feature the prominent coverage on the home page of the websites established by the third-party business platform.

Article 12 Labeling

Infant formula milk powder of online free-trade import shall contain Chinese labeling that shall be printed at the smallest sales packages before entry into China. The commodities are forbidden to be labeled in China. The other online free-trade import food shall contain Chinese labeling and Chinese instructions. The commodities that need special requirements of eating and keeping or contain food allergens are required to attach paper Chinese labeling and Chinese instructions. The trading enterprises shall attach the paper Chinese labeling and instructions or provide the electronic information of the Chinese labeling and instructions via the cross-border E-commerce platform. Consumers shall make the alternative when filling out the orders. The electronic information shall include the details required by the Chinese laws and national standards of food safety, corporate names and contacts of the platform enterprises and the trading enterprises.

The platform enterprises shall keep the fundamental information mentioned

above on the website for consumer enquiry.

Article 13 Qualification

The trading enterprises shall conduct self-tests for the online free-trade import food and shall provide the qualification materials to the inspection and quarantine institutions. The qualification materials shall be issued by the well-qualified laboratory. The test for the debut import shall cover all the food safety and hygiene items required by the national food safety standards. The test for the re-import shall include the food safety and hygiene items of medium and high hazards assessed by the entry-exit inspection and quarantine bureau.

Article 14 Entry Declaration

The trading enterprises or the inspection agency shall declare the online free-trade import food to the local entry-exit inspection and quarantine bureau and submit the following materials.

1. The item, item code/NO. and the corresponding HS code;
2. The official pratique of the exporting country (region) required by the laws, bilateral agreements, protocols or other regulations;
3. The qualification materials of the commodities;
4. The record number of the trading enterprise;
5. The evidence of registration, files on record and safety assessment.

Article 15 Information Records

The trading enterprises shall keep the sales records and establish the information tracing system for the online free-trade import food. All the records shall faithfully include the item, the brand, the size, the quantity, the production date, the production or import batch number, the official certificate number, the

expiration date, the overseas manufacturer, the overseas exporter, the item, address and contacts of the domestic consumers and the entry date, etc. The information records shall be established faithfully and shall be reserved no less than six months after the expiration date or shall be reserved no less than two years for the commodities without definite expiration date.

The platform enterprise shall audit, record and reserve all the food safety information and the publishing time that are released on the platform. The period to reserve the information of license and the business certificates shall be no less than two years since the business dealers put an end to the business on the platform. The period to reserve the records of trade shall be no less than six months after the expiration date or shall be no less than two years for the commodities without definite expiration date.

The platform enterprise shall take the technical measures such as data backup or failover to guarantee the safety and the completeness of the data and materials of online food trade, and ensure the authenticity of original data.

Article 16 Routine Inspection Report

The platform enterprise shall set up the inspection system along with the establishment of the specialized management institution or the appointment of the administrators, which is designed to have the food information checked, prohibit the illegal business that involves fraudulent information, exaggerated propaganda or any activities that exceed the business scope, and prevent the hidden problems of quality safety and any other possible hazards. The reports shall be presented to the local inspection and quarantine departments. Any service on the platform for the online trade shall be terminated once the illegal business occurs.

Article 17 Product Recall

The trading enterprises shall promptly terminate selling and importing the online free-trade import food that is not in conformity with the national food safety standards or has been proved harmful to health, or recall the defective products that have been sold according to the Food Safety Law of the People's Republic of China. The trading enterprise shall take emergency measures for the recalled products, which includes compensation, innocent processing and product destruction.

The platform enterprise shall promptly take measures to terminate selling and assist recalling of the products with safety problems or other possible hazards promulgated by the entry-exit inspection and quarantine bureau.

Article 17 Assistance in Surveillance and Inspection

The trading enterprise shall take the initiatives to assist the inspection and quarantine departments, providing all the essential technical support of information enquiry and data accessibility.

The platform enterprise shall act with quick response to receive, process and report the food safety information. The essential technical support shall be provided to the entry-exit inspection and quarantine bureau for information inquiry, data accessibility and service termination.

The platform enterprise shall be required to take measures to prohibit the business that breaks the regulations of food safety on the platform in the event that the entry-exit inspection and quarantine bureau points out the illegal business on the third-party platform.

Article 19 Civil Compensation

Consumers shall require the trading enterprise on the platform to make compensation in the event that the legal rights and interests are damaged by the food online from the platform enterprise. The platform enterprise shall make the compensation in the event that it fails to provide the real name, address and contacts of the trading enterprise. The platform enterprise after its assumption of the liability shall be entitled to recourse against the trading enterprise on the platform.

The platform enterprise has confirmed or shall confirm that the trading enterprise takes advantage of the platform to infringe upon the legal rights and interests of consumers. The platform enterprise shall assume joint liability with the food trading enterprise in the event that it doesn't take essential measures or doesn't implement the obligations of inspection in accordance with the regulations.

Article 20 Consumer Protection

The platform enterprise shall take measures to establish the consumer protection system and assume the responsibility of figuring out consumption disputes.

APTER III SAFETY SURVEILLANCE

Article 21 Inspection and Quarantine

The entry-exit inspection and quarantine bureau is entitled to conduct the entry quarantine of the online free-trade import food to ensure it meets the requirements of domestic quarantine.

The entry-exit inspection and quarantine bureau is entitled to conduct the inspection and surveillance of the online free-trade import food based upon the hazards analysis in accordance with the related laws and administrative regulations of import and export commodities.

The entry-exit inspection and quarantine bureau shall promptly notify the trading enterprise of the relevant information and urge the enterprise to terminate selling and make the recall in the event that the online free-trade import food is not in conformity with the laws and the national food safety standards.

The entry-exit inspection and quarantine bureau shall implement the centralized declaration, inspection and quarantine, and release in batches for the online free-trade import food with a view to accelerating product inspection and clearance.

Article 22 Selective Inspection

AQSIQ and the local entry-exit inspection and quarantine bureau are entitled to annually conduct the selective inspection of the quality safety for the online free-trade import food and promulgate the result regularly.

Article 23 Surveillance

The entry-exit inspection and quarantine bureau shall assume the responsibility of supervising the record information of trading enterprises and platform enterprises, the import and sales records, the information traceability and the product recall.

Article 24 Credibility Record

AQSIQ is entitled to conduct the credibility management of trading enterprises and establish credibility system. AQSIQ shall strengthen the surveillance of inspection and quarantine of the online free-trade import food for the enterprise with illicit records. The enterprise shall be forbidden to trade the online free-trade import food if the circumstances are serious.

This Regulation shall come into force on the date of _____. AQSIQ reserves the rights of the explanation of this Regulation. The relevant regional regulations that are not in conformity with this Regulation shall abide by this Regulation. The safety surveillance of the online free-trade import cosmetics shall refer to this Regulation.