

Re-enforced checks on seafood: Frequently Asked Questions

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Overview

The purpose of this guidance is to explain the specific procedures applied to re-enforced checks on seafood under Article 24 of Directive 97/78/EC.

What consignments will be the subject of re-enforced checks?

Article 24 of Directive 97/78/EC sets out the standards required for re-enforced checks (RECs) that are initiated by either a rapid alert issued under the Commission's Rapid Alert System for Food and Feed (RASFF) or a serious/repeated infringement of EU harmonised *veterinary* legislation. There is further information on the RASFF system available at the weblink below:

http://ec.europa.eu/food/safety/rasff/index_en.htm

The RASFF annual report gives an insight into the types of notifications, products, hazards and countries that have been reported each year and this can be used by businesses to manage and profile risk.

Any programme of RECs will be confirmed by the European Commission and the RECs will usually be applicable only to consignments from the same establishment of origin (in the third country) for which the notification is made. For example, where a microbiological contamination notification results from hygiene failures, all products coming from the same establishment will undergo RECs to assure food safety in response to this hygiene failure.

The following examples are based on the EU legislation and are non-exhaustive.

Serious infringements include:

- Microbiological failures
- Excessive levels of contaminants (e.g. heavy metals) or histamine in certain fish
- A breach of maximum residue levels
- Any breach of import conditions that poses an animal or public health risk that requires notification on RASFF.

Repeated infringements include:

- Repetition of unfavourable results taken from consignments from the same third country, region or establishment of origin,
- Repeated certification errors or labelling errors for example relating to the identification mark (country and approval number of establishment).
- Repeated requirement for replacement certification due to errors relating to identification of the consignment.

What test will be carried out?

When the RECs are triggered, the next 10 consignments from the same establishment will be stopped and must undergo physical checks and/or laboratory tests relating to the reason for the original notification. This requirement applies to all Member States. The type of tests will vary based on the type of infringement experienced when initiating the RECs.

How are RECs charged to the Food Business Operator?

The costs accrued (including the taking of samples and the laboratory tests) will be charged to the person responsible for the consignment.

How are consignments subject to RECs?

A programme of re-enforced checks begins when a Member State notifies the European Commission of a serious or repeated infringement of veterinary legislation. Following the implementation of a REC programme, the next 10 consignments arriving in the EU are subjected to a re-enforced check. If the results for all 10 consignments are satisfactory then the REC will finish.

If *any* unfavourable result is found in the first group of 10 consignments, a second group of 10 consecutive consignments begins. In total, there could be up to three such groups of 10 consecutive consignments. If all of the 3 groups are unsatisfactory, the re-enforced check has the status of 'imposing checks' which means all subsequent consignments are subject to re-enforced checks until such time as the exporting country takes appropriate remedial action or the establishment is removed from the EU-approved list or the issue is otherwise resolved.

Once the first 10 consignments have been sampled, additional consignments may continue to arrive in the EU before the results of the first 10 consignments are known. These additional consignments will be detained at the border until the results of the first 10 consignments are known and are satisfactory.

As an alternative to waiting for the results of the first 10 consignments, the person responsible for such additional consignments may elect to have their consignments sampled at their expense. Where this happens, such additional consignments must remain in the port pending the results even if all of the results for the first 10 consignments come back as satisfactory in the meantime.

However, if the results for an additional consignment are satisfactory, that consignment can be released regardless of the results for the first 10 consignments. Deciding whether to wait for the results of the first 10 consignments or to elect for sampling is a judgment for the person responsible for the load to make.

When is a REC programme withdrawn?

REC programmes last until 10 consecutive favourable physical checks of the consignments in question occurs. Once these favourable results are achieved, the REC programme is removed.

Can the consignment be returned to the country of origin or re-exported?

Article 24 of Directive 97/78/EC is implemented across the EU. In England, Regulation 22 of The Trade in Animals and Related Products Regulations (TARP) 2011 provides as follows:

Serious or repeated infringements and breach of maximum residue limits

22.—(1) If veterinary checks in any member State reveal that products entering the European Union from a particular third country, part of a third country or establishment in a third country are implicated in serious or repeated infringements of any import requirement, or where those checks reveal that maximum residue levels have been exceeded, this regulation applies to the next ten consignments brought into England from that third country, part of a third country or establishment.

(2) The official veterinary surgeon must carry out a physical check on the product, and take samples and have them analysed.

(3) The person responsible for the consignment must lodge with the official veterinary surgeon a deposit or guarantee sufficient to assure payment of all charges, including the taking of samples, and tests or analysis.

-The Trade in Animals and Related Products Regulations (TARP) 2011

Regulation 22 implies a distinction between the “next 10 consignments” (so 2-11 if ‘1’ is the initial offending consignment) referred to in Article 24 of Directive 97/78/EC and any subsequent consignments as it relates to specific handling and testing.

Regulation 20 of The Trade in Animals and Related Products Regulations (TARP) 2011 makes provision for the action to be taken following failure of veterinary checks on consignments of products:

Regulation 20

Action following failure of checks or seizure – products

20.—(1) In the case of a product, if the checks at a border inspection post show that the consignment does not satisfy the conditions in the instrument in Schedule 1 relating to that product, or where such checks reveal an irregularity, the official veterinary surgeon, after consultation with the person responsible for the consignment, must—

(a) permit the use of the consignment as animal by-products in accordance with Regulation (EC) No. 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption (a) provided there is no risk to human or animal health;

(b) where health conditions permit, require the person in charge of the consignment to redispach the product outside the European Union from the same border inspection post to a destination agreed with the person responsible for the consignment, using the same means of transport, within a maximum time limit of 60 days; or

(c) if the person responsible for the consignment gives immediate agreement, redispach is impossible or the 60-day time limit has elapsed, destroy the products.

(2) Pending redispach or confirmation of the reasons for rejection, the person responsible for the consignment must store the consignment under the supervision of the enforcement authority at the expense of the person responsible for the consignment.

By virtue of Regulation 20(1) (b) the consignment could be returned to the country of origin if health conditions permit or could be re-dispatched to another destination agreed with the person responsible for the consignment provided the consignment is re-dispatched within 60 days.

Where the consignment is returned to origin, in accordance with Article 21 of Regulation (EC) No 882/2004, the competent authority for the country must be notified that the consignment is to be returned and the reason for the return. If the consignment is to be sent to a different third country then the competent authority for that country must agree to accept the consignment

However the consignment must be destroyed if the 60 day limitation period has expired, the person responsible for the load has provided immediate agreement to the product's destruction or there are otherwise animal health or human health grounds which render re-dispatch impossible.

The consignment can be used as an animal by-product provided that there is no risk to human or animal health. However it would be classified as Category 2 material which limits such possible uses to those applicable for Category 2 material. For example, its use as petfood would be prohibited.

What is the role of TRACES in a REC programme?

TRACES ("Trade Control and Expert System") is a computer system maintained by the European Commission which handles the statutory notifications by food business operators or their agents of the arrival of certain consignments of food, feed and animal by-products to officials at the border where the import controls are to be carried out. Once the controls have been completed, the official enters the outcome of the checks on TRACES.

Where a consignment fails checks due to a physical hygiene or laboratory failure or where checks show that Community legislation has been repeatedly breached, the officer is obliged by the system to complete the rapid alert fields on TRACES.

Once completed, the rapid alert is sent by the system to the central competent authority of the Member State concerned who considers whether or not it is appropriate to forward the rapid alert to the Commission for publication and also whether or not a REC should be started. The Commission will review the rapid alert and any request for a REC and will make the final decision as to whether the rapid alert should be published and whether a REC should be initiated.

If a REC is launched, then TRACES flags up each affected consignment notified to the official at the border. The system also keeps the EU-wide tally of the groups of 10 consignments and their results.

How does the re-enforced checks system improve food safety?

The re-enforced checks system is intended to improve the safety of imported foods. Re-enforced checks are applied when import checks already undertaken show that Community legislation has been seriously or repeatedly breached. The additional import checks are implemented to provide stronger assurance that food is safe to eat. The checks are normally applied only to the specific establishment where there are concerns for public health. However it could potentially be applied to a wider area if the hazard is not limited to the establishment concerned.

How is the affected importer notified that consignments are subject to RECs?

The importer will be advised by the Border Inspection Post (BIP) that the consignment is subject to a REC and why.

Can consignments be re-dispatched?

The competent authority will only allow a re-dispatch of consignments if the destination has been agreed with the feed or food business operator responsible for the consignment and when the food or feed business operator has informed the competent authority of the third country of origin or third country of destination (if different) of the reasons and circumstances preventing the placing of the market of the feed or food concerned within the European Community.

The competent authority may allow a re-dispatch of consignments when the third country of destination is not the third country of origin and the competent authority of the third country of destination has notified the competent authority of its preparedness to accept the consignment. The process for re-dispatching consignments is as listed under Article 21 of EC Regulation No 882/2004.

How can the affected importer find out more information on the status of a particular establishment?

Importers can access TRACES but importers will have different permissions and levels of access compared to BIPs, the central competent authorities and the European Commission. Importers will not be able to see information about other importers which may give importers a commercial advantage.

When a consignment subject to re-enforced checks is notified to TRACES, the BIP is automatically instructed to undertake the REC).

How can the affected importer find out more information on the status of a particular establishment?

When a consignment subject to re-enforced checks is notified to TRACES, the BIP is automatically instructed to take a sample (through the use of the TRACES system). A programme of re-enforced checks begins when a Member States notify the European Commission of a serious or repeated infringement of veterinary legislation. The importer can find further information about RECs through the European Commission webpages and by contacting the Food Standards Agency. RECs are included as an agenda item for meetings of the Expert Group for Veterinary Checks for analysis by the European Commission and for comments from Member States to be discussed.

Where can importers find out further information?

European Commission guidance can be found at

http://ec.europa.eu/food/animals/docs/bips_guidance_eu-dir-1997-78_art24.pdf

If importers have any enquiries about the REC process or the use of TRACES, importers can contact imported.food@foodstandards.gsi.gov.uk for further information and advice.