a voluntary recall, or to issue an order to cease distribution or to recall under any other provision of this chapter or under the Public Health Service Act [42 U.S.C. 201 et seq.].

(j) Coordinated communication

(1) In general

To assist in carrying out the requirements of this subsection, the Secretary shall establish an incident command operation or a similar operation within the Department of Health and Human Services that will operate not later than 24 hours after the initiation of a mandatory recall or the recall of an article of food for which the use of, or exposure to, such article will cause serious adverse health consequences or death to humans or animals.

(2) Requirements

To reduce the potential for miscommunication during recalls or regarding investigations of a food borne illness outbreak associated with a food that is subject to a recall, each incident command operation or similar operation under paragraph (1) shall use regular staff and resources of the Department of Health and Human Services to—

(A) ensure timely and coordinated communication within the Department, including enhanced communication and coordination between different agencies and organizations within the Department;

(B) ensure timely and coordinated communication from the Department, including public statements, throughout the duration of the investigation and related foodborne illness outbreak;

(C) identify a single point of contact within the Department for public inquiries regarding any actions by the Secretary related to a recall;

(D) coordinate with Federal, State, local, and tribal authorities, as appropriate, that have responsibilities related to the recall of a food or a foodborne illness outbreak associated with a food that is subject to the recall, including notification of the Secretary of Agriculture and the Secretary of Education in the event such recalled food is a commodity intended for use in a child nutrition program (as identified in section 1769f(b) of title 42); and

(E) conclude operations at such time as the Secretary determines appropriate.

(3) Multiple recalls

The Secretary may establish multiple or concurrent incident command operations or similar operations in the event of multiple recalls or foodborne illness outbreaks necessitating such action by the Department of Health and Human Services.

(June 25, 1938, ch. 675, §423, as added Pub. L. 111–353, title II, §206(a), Jan. 4, 2011, 124 Stat. 3939.)

Editorial Notes

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (i), is act July 1, 1944, ch. 373, 58 Stat. 682, which is classified generally to chapter 6A (§201 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 201 of Title 42 and Tables.

Statutory Notes and Related Subsidiaries

CONSTRUCTION

Nothing in this section to be construed to alter jurisdiction and authorities established under certain other Acts or in a manner inconsistent with international agreements to which the United States is a party, see sections 2251 and 2252 of this title.

SEARCH ENGINE

Pub. L. 111–353, title II, §206(b), Jan. 4, 2011, 124 Stat. 3942, provided that: ''Not later than 90 days after the date of enactment of this Act [Jan. 4, 2011], the Secretary shall modify the Internet Web site of the Food and Drug Administration to include a search engine that—

''(1) is consumer-friendly, as determined by the Secretary; and

''(2) provides a means by which an individual may locate relevant information regarding each article of food subject to a recall under section 423 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 350*l*] and the status of such recall (such as whether a recall is ongoing or has been completed).''

§ 350*l*–1. Annual report to Congress

(1) In general

Not later than 2 years after January 4, 2011, and annually thereafter, the Secretary of Health and Human Services (referred to in this section as the ''Secretary'') shall submit a report to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives on the use of recall authority under section 350*l* of this title (as added by subsection (a))[1] and any public health advisories issued by the Secretary that advise against the consumption of an article of food on the ground that the article of food is adulterated and poses an imminent danger to health.

(2) Content

The report under paragraph (1) shall include, with respect to the report year—

(A) the identity of each article of food that was the subject of a public health advisory described in paragraph (1), an opportunity to cease distribution and recall under subsection (a) of section 350*l* of this title, or a mandatory recall order under subsection (b) of such section;

(B) the number of responsible parties, as defined in section 350f of this title, formally given the opportunity to cease distribution of an article of food and recall such article, as described in section 350*l*(a) of such title;

(C) the number of responsible parties described in subparagraph (B) who did not cease distribution of or recall an article of food after given the opportunity to cease distribution or recall under section 350*l*(a) of this title;

(D) the number of recall orders issued under section 350*l*(b) of this title; and

(E) a description of any instances in which there was no testing that confirmed adultera-

[1] See References in Text note below.

tion of an article of food that was the subject of a recall under section 350*l*(b) of this title or a public health advisory described in paragraph (1).

(Pub. L. 111–353, title II, § 206(f), Jan. 4, 2011, 124 Stat. 3943.)

Editorial Notes

REFERENCES IN TEXT

Subsection (a), referred to in par. (1), means subsec. (a) of section 206 of Pub. L. 111–353.

CODIFICATION

Section was enacted as part of the FDA Food Safety Modernization Act, and not as part of the Federal Food, Drug, and Cosmetic Act which comprises this chapter.

Statutory Notes and Related Subsidiaries

CONSTRUCTION

Nothing in this section to be construed to alter jurisdiction and authorities established under certain other Acts or in a manner inconsistent with international agreements to which the United States is a party, see sections 2251 and 2252 of this title.

§ 350m. Requirements for critical food

(a) Notification of meaningful disruption for critical food

(1) In general

A manufacturer of a critical food (as defined in section 321(ss) of this title) shall notify the Secretary of a permanent discontinuance in the manufacture or an interruption of the manufacture of such food that is likely to lead to a meaningful disruption in the supply of such food in the United States, and the reasons for such discontinuance or interruption, as soon as practicable, but not later than 5 business days after such discontinuance or such interruption.

(2) Distribution of information

Not later than 5 calendar days after receiving a notification under paragraph (1), if the Secretary has determined that such discontinuance or interruption has resulted, or is likely to result, in a shortage of such critical food, the Secretary shall distribute, to the Secretary of Agriculture and to the maximum extent practicable to the appropriate entities, as determined by the Secretary through such means as the Secretary determines appropriate, information on such shortage.

(3) Confidentiality

Nothing in this subsection authorizes the Secretary to disclose any information that is a trade secret or confidential information subject to section 552(b)(4) of title 5 or section 1905 of title 18.

(4) Meaningful disruption

In this subsection, the term ''meaningful disruption''—

(A) means a change in production that is reasonably likely to lead to a significant reduction in the supply of a critical food by a manufacturer that affects the ability of the manufacturer to meet expected demand for its product; and

(B) does not include interruptions in manufacturing due to matters such as routine maintenance, changes or discontinuance of flavors, colors, or other insignificant formulation characteristics, or insignificant changes in manufacturing so long as the manufacturer expects to resume operations in a short period of time.

(b) Risk management plans

Each manufacturer of a critical food shall develop, maintain, and implement, as appropriate, a redundancy risk management plan that identifies and evaluates risks to the supply of the food, as applicable, for each establishment in which such food is manufactured. A risk management plan under this subsection—

(1) may identify and evaluate risks to the supply of more than one critical food, or critical food category, manufactured at the same establishment;

(2) may identify mechanisms by which the manufacturer would mitigate the impacts of a supply disruption through alternative production sites, alternative suppliers, stockpiling of inventory, or other means; and

(3) shall be subject to inspection and copying by the Secretary pursuant to an inspection under section 374 of this title.

(c) Failure to meet requirements

(1) In general

If a person fails to submit information required under, and in accordance with, subsection (a)—

(A) the Secretary shall issue a letter to such person informing such person of such failure; and

(B) not later than 45 calendar days after the issuance of a letter under subparagraph (A), subject to paragraph (2), the Secretary shall make available to the public on the website of the Food and Drug Administration, with appropriate redactions made to protect the information described in subsection (a)(3)—

(i) the letter issued under subparagraph (A); and

(ii) at the request of such person, any response to such letter such person submitted to the Secretary.

(2) Exception

If the Secretary determines that the letter under paragraph (1) was issued in error or, after review of such response, the person had a reasonable basis for not submitting a notification as required under subsection (a), the requirements of paragraph (1)(B) shall not apply.

(June 25, 1938, ch. 675, § 424, as added Pub. L. 117–328, div. FF, title III, § 3401(k), Dec. 29, 2022, 136 Stat. 5844.)

SUBCHAPTER V—DRUGS AND DEVICES

PART A—DRUGS AND DEVICES

§ 351. Adulterated drugs and devices

A drug or device shall be deemed to be adulterated—