

and is to be directed to the firm that has primary responsibility for the manufacture and marketing of the product that is to be recalled.

(c) Recall is generally more appropriate and affords better protection for consumers than seizure, when many lots of product have been widely distributed. Seizure, multiple seizure, or other court action is indicated when a firm refuses to undertake a recall requested by the Food and Drug Administration, or where the agency has reason to believe that a recall would not be effective, determines that a recall is ineffective, or discovers that a violation is continuing.

[43 FR 26218, June 16, 1978, as amended at 65 FR 56476, Sept. 19, 2000]

§ 7.41 Health hazard evaluation and recall classification.

(a) An evaluation of the health hazard presented by a product being recalled or considered for recall will be conducted by an ad hoc committee of Food and Drug Administration scientists and will take into account, but need not be limited to, the following factors:

(1) Whether any disease or injuries have already occurred from the use of the product.

(2) Whether any existing conditions could contribute to a clinical situation that could expose humans or animals to a health hazard. Any conclusion shall be supported as completely as possible by scientific documentation and/or statements that the conclusion is the opinion of the individual(s) making the health hazard determination.

(3) Assessment of hazard to various segments of the population, e.g., children, surgical patients, pets, livestock, etc., who are expected to be exposed to the product being considered, with particular attention paid to the hazard to those individuals who may be at greatest risk.

(4) Assessment of the degree of seriousness of the health hazard to which the populations at risk would be exposed.

(5) Assessment of the likelihood of occurrence of the hazard.

(6) Assessment of the consequences (immediate or long-range) of occurrence of the hazard.

(b) On the basis of this determination, the Food and Drug Administration will assign the recall a classification, i.e., Class I, Class II, or Class III, to indicate the relative degree of health hazard of the product being recalled or considered for recall.

§ 7.42 Recall strategy.

(a) *General.* (1) A recall strategy that takes into account the following factors will be developed by the agency for a Food and Drug Administration-requested recall and by the recalling firm for a firm-initiated recall to suit the individual circumstances of the particular recall:

(i) Results of health hazard evaluation.

(ii) Ease in identifying the product.

(iii) Degree to which the product's deficiency is obvious to the consumer or user.

(iv) Degree to which the product remains unused in the market-place.

(v) Continued availability of essential products.

(2) The Food and Drug Administration will review the adequacy of a proposed recall strategy developed by a recalling firm and recommend changes as appropriate. A recalling firm should conduct the recall in accordance with an approved recall strategy but need not delay initiation of a recall pending review of its recall strategy.

(b) *Elements of a recall strategy.* A recall strategy will address the following elements regarding the conduct of the recall:

(1) *Depth of recall.* Depending on the product's degree of hazard and extent of distribution, the recall strategy will specify the level in the distribution chain to which the recall is to extend, as follows:

(i) Consumer or user level, which may vary with product, including any intermediate wholesale or retail level; or

(ii) Retail level, including any intermediate wholesale level; or

(iii) Wholesale level.

(2) *Public warning.* The purpose of a public warning is to alert the public that a product being recalled presents a serious hazard to health. It is reserved for urgent situations where other means for preventing use of the

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recalled product appear inadequate. The Food and Drug Administration in consultation with the recalling firm will ordinarily issue such publicity. The recalling firm that decides to issue its own public warning is requested to submit its proposed public warning and plan for distribution of the warning for review and comment by the Food and Drug Administration. The recall strategy will specify whether a public warning is needed and whether it will issue as:

(i) General public warning through the general news media, either national or local as appropriate, or

(ii) Public warning through specialized news media, e.g., professional or trade press, or to specific segments of the population such as physicians, hospitals, etc.

(3) *Effectiveness checks.* The purpose of effectiveness checks is to verify that all consignees at the recall depth specified by the strategy have received notification about the recall and have taken appropriate action. The method for contacting consignees may be accomplished by personal visits, telephone calls, letters, or a combination thereof. A guide entitled "Methods for Conducting Recall Effectiveness Checks" that describes the use of these different methods is available upon request from the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. The recalling firm will ordinarily be responsible for conducting effectiveness checks, but the Food and Drug Administration will assist in this task where necessary and appropriate. The recall strategy will specify the method(s) to be used for and the level of effectiveness checks that will be conducted, as follows:

(i) Level A—100 percent of the total number of consignees to be contacted;

(ii) Level B—Some percentage of the total number of consignees to be contacted, which percentage is to be determined on a case-by-case basis, but is greater than 10 percent and less than 100 percent of the total number of consignees;

(iii) Level C—10 percent of the total number of consignees to be contacted;

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(iv) Level D—2 percent of the total number of consignees to be contacted; or

(v) Level E—No effectiveness checks.

[43 FR 26218, June 16, 1978, as amended at 46 FR 8455, Jan. 27, 1981; 59 FR 14363, Mar. 28, 1994; 68 FR 24879, May 9, 2003]

§7.45 Food and Drug Administration-requested recall.

(a) The Commissioner of Food and Drugs or designee may request a firm to initiate a recall when the following determinations have been made:

(1) That a product that has been distributed presents a risk of illness or injury or gross consumer deception.

(2) That the firm has not initiated a recall of the product.

(3) That an agency action is necessary to protect the public health and welfare.

(b) The Commissioner or his designee will notify the firm of this determination and of the need to begin immediately a recall of the product. Such notification will be by letter or telegram to a responsible official of the firm, but may be preceded by oral communication or by a visit from an authorized representative of the local Food and Drug Administration district office, with formal, written confirmation from the Commissioner or his designee afterward. The notification will specify the violation, the health hazard classification of the violative product, the recall strategy, and other appropriate instructions for conducting the recall.

(c) Upon receipt of a request to recall, the firm may be asked to provide the Food and Drug Administration any or all of the information listed in §7.46(a). The firm, upon agreeing to the recall request, may also provide other information relevant to the agency's determination of the need for the recall or how the recall should be conducted.

[43 FR 26218, June 16, 1978, as amended at 69 FR 17290, Apr. 2, 2004]

§7.46 Firm-initiated recall.

(a) A firm may decide of its own volition and under any circumstances to