

387q(c)(4) of this title, the issue of the nature and impact of the use of dissolvable tobacco products on the public health, including such use among children. In its review, the Tobacco Products Scientific Advisory Committee shall address the considerations listed in subsection (a)(3)(B)(i).

(2) Report and recommendation

Not later than 2 years after its establishment, the Tobacco Product Scientific Advisory Committee shall submit to the Secretary the report and recommendations required pursuant to paragraph (1).

(3) Rule of construction

Nothing in this subsection shall be construed to limit the Secretary's authority to take action under this section or other sections of this chapter at any time applicable to any dissolvable tobacco product.

(June 25, 1938, ch. 675, §907, as added Pub. L. 111-31, div. A, title I, §101(b)(3), June 22, 2009, 123 Stat. 1799.)

Editorial Notes

PRIOR PROVISIONS

A prior section 907 of act June 25, 1938, was renumbered section 1007 and is classified to section 397 of this title.

§ 387h. Notification and other remedies

(a) Notification

If the Secretary determines that—

(1) a tobacco product which is introduced or delivered for introduction into interstate commerce for commercial distribution presents an unreasonable risk of substantial harm to the public health; and

(2) notification under this subsection is necessary to eliminate the unreasonable risk of such harm and no more practicable means is available under the provisions of this subchapter (other than this section) to eliminate such risk,

the Secretary may issue such order as may be necessary to assure that adequate notification is provided in an appropriate form, by the persons and means best suited under the circumstances involved, to all persons who should properly receive such notification in order to eliminate such risk. The Secretary may order notification by any appropriate means, including public service announcements. Before issuing an order under this subsection, the Secretary shall consult with the persons who are to give notice under the order.

(b) No exemption from other liability

Compliance with an order issued under this section shall not relieve any person from liability under Federal or State law. In awarding damages for economic loss in an action brought for the enforcement of any such liability, the value to the plaintiff in such action of any remedy provided under such order shall be taken into account.

(c) Recall authority

(1) In general

If the Secretary finds that there is a reasonable probability that a tobacco product con-

tains a manufacturing or other defect not ordinarily contained in tobacco products on the market that would cause serious, adverse health consequences or death, the Secretary shall issue an order requiring the appropriate person (including the manufacturers, importers, distributors, or retailers of the tobacco product) to immediately cease distribution of such tobacco product. The order shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than 10 days after the date of the issuance of the order, on the actions required by the order and on whether the order should be amended to require a recall of such tobacco product. If, after providing an opportunity for such a hearing, the Secretary determines that inadequate grounds exist to support the actions required by the order, the Secretary shall vacate the order.

(2) Amendment of order to require recall

(A) In general

If, after providing an opportunity for an informal hearing under paragraph (1), the Secretary determines that the order should be amended to include a recall of the tobacco product with respect to which the order was issued, the Secretary shall, except as provided in subparagraph (B), amend the order to require a recall. The Secretary shall specify a timetable in which the tobacco product recall will occur and shall require periodic reports to the Secretary describing the progress of the recall.

(B) Notice

An amended order under subparagraph (A)—

(i) shall not include recall of a tobacco product from individuals; and

(ii) shall provide for notice to persons subject to the risks associated with the use of such tobacco product.

In providing the notice required by clause (ii), the Secretary may use the assistance of retailers and other persons who distributed such tobacco product. If a significant number of such persons cannot be identified, the Secretary shall notify such persons under section 375(b) of this title.

(3) Remedy not exclusive

The remedy provided by this subsection shall be in addition to remedies provided by subsection (a).

(June 25, 1938, ch. 675, §908, as added Pub. L. 111-31, div. A, title I, §101(b)(3), June 22, 2009, 123 Stat. 1804.)

Editorial Notes

PRIOR PROVISIONS

A prior section 908 of act June 25, 1938, was renumbered section 1008 and is classified to section 398 of this title.

§ 387i. Records and reports on tobacco products

(a) In general

Every person who is a tobacco product manufacturer or importer of a tobacco product shall