

Reporting and
corrective actions
CPSC versus
GPSD

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Scope of Legislation

- CPSC - “Consumer product” defined broadly but many products carved out of Commission jurisdiction by statute
- GPSD - any product intended for consumers or likely under reasonably foreseeable circumstances to be used by consumers even if not intended for use by them, unless subject to a specific directive
- Includes items not covered by CPSC, such as automobiles

Defining Safe Products

- CPSC - no definition of safe product
- GPSD - defines what a safe product is and creates an affirmative duty to ensure only safe products are sold

“Safe Product” means

‘Any product which, under normal or reasonably foreseeable conditions of use, including duration and putting into service, installation and maintenance requirements, does not present any risk or only the minimum risks compatible with the product’s use considered to be acceptable and consistent with a high level of protection for the safety and health of persons.

Taking into account -

- the characteristics of the product
- the effect of the product on other products
- the presentation of the product
- the categories of consumers at risk when using the product’.

Simmons & Simmons

Role of Member States

- CPSC - State laws may or may not be influential. State requirements may be pre-empted by federal law, including CPSC standards or rules
- GPSD - product in conformity with specific rules of a Member State is deemed safe
- However, limited scope for national rules

To whom does regulation apply?

- CPSC - reporting obligation applies to manufacturer, distributor and retailer
- importer is considered to be a manufacturer for this purpose
- GPSD - producers and distributors
- producer means
 - the manufacturer of the product
 - the manufacturer's representative
 - the importer of the product (where no representative established in the Community)
 - any other professionals in the supply chain

Post-Marketing Obligations - producers

- CPSC - no general duty is specified, but firms are deemed to know what would be known by a reasonable firm under the circumstances, including follow up of complaints
- GPSD - Producers
 - ensure means to be informed about risks
 - sample testing of marketed products
 - investigate and maintain a register of complaints
 - keep distributors informed of monitoring

Post-Marketing Obligations - retailers/distributors

■ CPSC - no specific duty

■ GPSD - Distributors (inc. retailers)

- ensure means to be informed about risks
- sample testing of marketed products
- investigate and maintain a register of complaints
- keep distributors informed of monitoring

Notifying Obligations

- CPSC - Section 15 obligation arises in four defined situations. Notification may be required even when a firm believes the product is safe
- GPSD - obligation arises whenever party knows or should know that product does not meet general definition of safe product

Role of Voluntary Standards

- CPSC - failure to meet voluntary standard may be indicative of defect; compliance with standards may weigh against defect determination but is not conclusive
- GPSD - presumption of conformity granted to products conforming to referenced standards

When Notification is not required

- CPSC - when company has actual knowledge that the Commission is adequately informed

- GPSD

- products covered by specific notification procedures of other Community legislation
- problems related to functional quality
- when the producer/distributor knows that the authorities have already been informed
- products for which the manufacturer has been able to take *immediate corrective action* for all items concerned

Number of Products

- CPSC - the number of products is a factor in deciding whether a substantial product hazard exists (but is not conclusive)
- GPSD - the number of products should not as such determine the decision to notify
- nor should the decision to notify be influenced by the number of people who could be affected

Obligation of Retailers

- CPSC - statutory obligation is the same as for manufacturers. CPSC allows retailers to make simple reports, with cross-notification to manufacturer. CPSC staff has also developed optional Retailer Reporting Model
- GPSD - obligation of retailers is secondary to that of manufacturers

Submission of Notifications

- CPSC - All notifications go to CPSC
- GPSD - Notifications go to designated national authorities
 - A list of the authorities designated appears on the Commission's website

Reporting Time Limits

- CPSC - regulations presume that information reaches individual responsible for reporting within five days. Firm has ten days to investigate, or longer period if firm can show it is reasonable
- GPSD - as soon as firm has “notifiable information”

Corrective action

- CPSC - firm may
 - await CPSC decision whether corrective action is necessary; or
 - commit to implement remedy of repair, replacement or refund of purchase price
- GPSD - firm may take appropriate action, such as withdrawal from market, warning to consumers, or recall from consumers. Authorities monitor and intervene only if necessary

Sanctions

- CPSC - civil penalties currently limited to \$8,000 per article, \$1,825,000 for series of related violations occurring after 1/1/2005 (lower limits for earlier violations)
- GPSD - Member states obligated to establish penalties that are “proportionate and dissuasive.”

Confidentiality

- CPSC - information remains confidential until CPSC investigation is complete. Then info may be released with prior notice to manufacturer unless trade secret
- GPSD - risk information should be made available to the public unless trade secret or would hamper law enforcement investigation

Notifications and Recalls one year on...

- Definition of recall
 - “any measure aimed at achieving the return of a dangerous product that has already been supplied or made available to consumers by the producer or distributor”
- Figures are at an all time high and this trend is reflected across the EU
- Some statistics

Consider

- Whether the notification process is effective, or
- Is the system being over loaded with non-relevant notifications?