Component Part Manufacturers Beware:  
Consumer Product Safety Laws May Apply to You

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If you manufacture or import component parts, you may think that the 2008 Consumer Product Safety Improvement Act ("CPSIA") does not apply to you. If you have such a thought, listen up: Consumer Product Safety laws can apply to you.

This article explains how statutory and case law, as well as guidance from the Consumer Product Safety Commission, show that component parts can be "consumer products" and what, in general, that means for you as a manufacturer or importer of component parts.

Statutory Definition of "Consumer Products" Includes Component Parts

The Consumer Product Safety Commission ("CPSC") governs consumer products. The United States Code defines a "consumer product" as "any article, or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in recreation, or otherwise." 15 U.S.C. § 2052 (emphasis added). Thus, by statutory definition, a component part of a consumer product is a consumer product.

Case Law Shows Component Parts Can Be Consumer Products

In addition to the definition of "consumer product" specifically including component parts, at least one U.S. Circuit Court of Appeals has determined that component parts are consumer products. In Consumer Product Safety Commission v. Anaconda Co., 593 F.2d 1314, 1319-20 (D.C. Cir. 1979), the court explained that "a product may be a 'consumer product' if it either is produced or distributed as a distinct article of commerce . . . or is produced and distributed as a component part of such a distinct article." 1

Guidance from the CPSC Shows Component Parts Can Be Consumer Products


1 The courts have also clarified that although arguably a component of a final product, raw materials are not component parts. As the Court in Sara Lee Corp. v. Homasote Co. explains, "raw materials sold only to manufacturers and having no direct use or application to consumers" are not consumer products and therefore, are not governed by the CPSC. 719 F. Supp. 417, 426 (D. Md. 1989). The raw materials involved in Sara Lee Corp. were expandable polystyrene beads ("EPS beads") used to make EPS board insulation. Id. at 419. Plaintiffs alleged the products at issue, including the EPS beads, contributed to a fire at a processing plant. Id. The court determined that the EPS beads were not component parts of a consumer product. Id. at 426.
example of a children’s clothing manufacturer asking a button supplier to provide third-party testing results. If component parts such as buttons are not considered a consumer product, one would expect a simple response from the CPSC to this end. Instead, the CPSC explained that the buttons by themselves may not constitute a children's product and therefore, the component part manufacturer would not have to conduct third party testing. The CPSC’s focus on whether the buttons constituted a children's product, not whether they constituted a consumer product, indicates to this author that the CPSC views components parts as consumer products.

Additionally, the CPSC’s General Counsel issued an Advisory Opinion in May of 1974 that stated that "component parts of consumer products are subject to the requirements of the Consumer Product Safety Act." [link to Advisory](http://www.cpsc.gov/library/foia/advisory/advisory.html), #126.

On December 28, 2009, the CPSC issued an interim enforcement policy regarding component part testing. [link to Enforcement Policy](http://www.cpsc.gov/businfo/frnotices/fr10/compol.pdf). The enforcement policy provides that paint itself may be tested prior to being applied to a product and also allows a domestic manufacturer or importer to rely on a certificate or test report from another person in certifying that the paint on their product complies with the 90 parts per million ("ppm") lead in paint limit. *Id.* Additionally, children’s products can be certified as being compliant with the 300 ppm lead content limit if the manufacturer or importer who certifies the product obtains a test report demonstrating passing test results for the component parts or certification for the component parts that they satisfy the applicable requirements. *Id.* The fact that the CPSC issued a policy allowing for certification of the final product based on testing or certification of the component parts is another indication that component parts qualify as consumer products.

**Even if You Do Not Sell Directly to Consumers, Your Component Parts May Still Be "Consumer Products"

The fact that you do not sell your products directly to consumers does not mean that your component parts are not consumer products under the Consumer Product Safety Laws. *See Consumer Product Safety Commission v. Anaconda Co.*, 593 F.2d 1314, 1320 (D.C. Cir. 1979). The definition of "consumer product" addresses "the various modes of distribution through which consumers acquire products," including both direct sales to consumers and "situations in which a consumer acquires the use of the product other than through a direct sale transaction, e.g., through lease, promotional gift, or purchase by an institution for consumer use." *Id.* The end use of a component part, in terms of the final product, is what really matters in deciding whether a component part is a "consumer product," not to whom you may be selling component parts. For more information on what constitutes a "consumer product," click here. [link to Stacy’s what constitutes consumer product article]
What Does Component Parts Being Consumer Products Mean for Component Part Manufacturers and Importers?

After all of the above, we know that component parts can be consumer products. What does that mean for component part manufacturers and importers? It means that the CPSC governs your component parts and certain new rules apply to you.

For example, importers of products manufactured outside the United States must satisfy the conformity certification requirements for all applicable rules, bans, standards, and regulations enforceable by the CPSC. 16 CFR § 1110.7(a). For products made in the United States, manufacturers must provide such certification. Id. The certification can be electronic or hard copy, must accompany the product or product shipment, and must be furnished to each distributor and retailer of the product. In the case of general component parts, certification must be based on a test of each product or upon a reasonable testing program. The certification must include the following information:

1. Identification of the product covered by the certificate;
2. Citation to each CPSC product safety regulation or statutory requirement to which the product is being certified;
3. Identification of the importer or domestic manufacturer certifying compliance, including name, address, and telephone number;
4. Contact information for the person maintaining records of test results, including name, address, email address, and telephone number;
5. Date and place where the product was manufactured;
6. Date and place where the product was tested for compliance.

16 CFR § 1110.11

Numbers 1 – 6 above also apply to certification of children's products. However, the requirements for children's products are more onerous. Children's products must be tested by a third-party conformity assessment body listed on the CPSC's website as being qualified. Additionally, for certification of children's products, the certification must identify the third-party test laboratory, including the lab's name, address, and telephone number. If your component part is a children's product, you may also have to worry about other new requirements specific to children's products, such as the lead content limit, phthalates ban, and tracking labels.

Right now you may be thinking "ignorance is bliss" or "what I don't know won't hurt me" and wishing you could "un-learn" that component parts can be consumer products governed by the CPSC. However, ignorance of the law is no excuse in the legal world and will not save the day if you fail to comply with the CPSC-governed rules, bans, and standards. Also, with recent clarifications from the CPSC regarding final product manufacturers being able to rely on certification from component part manufacturers, it is a safe bet that the final product manufacturers will be looking to component part manufacturers for certification. If the final product manufacturer makes children's products and wants the component part manufacturer to certify that the component part complies with the children's products requirements, then the component part manufacturer has a business decision to make. Incur the cost of third-party
testing as well as testing for requirements not applicable to a non-children's product, pass that cost on to the final product manufacturer, or refuse to provide such certification and testing and risk losing business?

CPSC compliance presents incredible challenges for businesses, both logistically and financially. The need for more guidance and clarification from the CPSC also adds to the difficulties in understanding what steps component part manufacturers and importers are required to take for compliance. Confusion, however, does not excuse companies from complying, which unfortunately places a significant burden on companies to try to interpret and apply the requirements.