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UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

TO : Commissioner Kushner

THRU : Michael A. Brown, General Counsel

DATE: SEP 8 1975

FROM : Philip Bechtel, Office of the General Counsel
PB

SUBJECT: Jurisdiction over Catalytic Converters in Automobiles

Jurisdiction Under the CPSA

The CPSC would not appear to have jurisdiction under the CPSA to regulate catalytic converters in automobiles, since these items do not fall within the definition of "consumer product" in Section 3(a) of the Consumer Product Safety Act, and are specifically excluded from the Commission's jurisdiction by section 3(a)(1)(c) of the CPSA.

Section 3(a)(1)(c) of the CPSA excludes from the definition of "consumer product" motor vehicle equipment as defined by Section 102(4) of the National Traffic and Motor Vehicle Safety Act of 1966 (NTMVSA)(15 U.S.C. 1381 et seq.). Motor vehicle equipment is defined in the NTMVSA as:

> "any system, part, or component of a motor vehicle as originally manufactured or any similar part or component manufactured or sold for replacement or improvement of such system, part, or component or as any accessory, or addition to the motor vehicle, and any device, article, or apparel not a system, part, or component of a motor vehicle (other than medicines, or eyeglasses prescribed by a physician or other duly licensed practitioner), which is manufactured, sold, delivered, offered, or intended for use exclusively to safeguard motor vehicles, drivers, passengers, and other highway users from risk of accident, injury, or death." [Section 102(4); 15 U.S.C. 1391(4))

It would appear that catalytic converters in automobiles fall within the scope of the phrase "any system, part, or component of a motor vehicle." The fact that the catalytic converters in question have been installed in order to comply with clean air standards promulgated by the EPA under the Clean Air Act (42 U.S.C. 1857 et seq.; Title II, Emission Standards for Moving Sources, Sec. 202) would not alter their categorization as motor vehicle equipment.

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ADVISORY OPINION

There may be some instances where the jurisdiction of the CPSC and NHTSA overlaps, and the CPSC and NHTSA would have concurrent jurisdiction to regulate products. As an example, a product used in a recreational vehicle as well as in a home could be considered motor vehicle equipment as well as a consumer product. However, in the case of catalytic converters, there would not seem to be any occasion where catalytic converters intended for installation in motor vehicles would be sold to or used by a consumer in or around a home, a school, in recreation, or otherwise, apart from their status as motor vehicle equipment. Catalytic converters that are sold to consumers for installation would probably remain "motor vehicle equipment"; since they could be considered to have been sold for "replacement" or "improvement" of the motor vehicle system, or as an "accessory" or"addition" to the motor vehicle, within the meaning of the terms "replacement," "improvement," "accessory" or "addition," as used in § 102(4) of the NTMVSA of 1966.

There is a possibility that catalytic converters would fall within Commission jurisdiction under the CPSA where catalytic converters were installed or intended for installation in products that are not "motor vehicles," as defined in § 102(3) of the NTMVSA of 1966. As an example, if a catalytic converter were installed in a lawnmower, then the catalytic converter would be subject to Commission jurisdiction under the CPSA, since a component of a consumer product is considered to be a consumer product under Section 3(a)(1) of the CPSA.

Jurisdiction Under Other Acts Administered by the CPSC

Although the FHSA, PPPA, and FFA, unlike the CPSA, do not contain provisions that specifically exclude motor vehicle equipment, the Commission would not appear to be able to regulate catalytic converters under any of these acts. In order for the Commission to be able to regulate catalytic converters for motor vehicles under the FHSA, the Commission would be required to make a finding that catalytic converters are likely to be found in or around the household under reasonably foreseeable conditions of purchase, storage, or use. (FHSA, § 2(p); § 2(q); 16 CFR § 1500.3(c)(10)(i). In order for catalytic converters to be subject to Commission jurisdiction under the PPPA, the converter would have to be a household substance, as defined in Section 2(2) of the PPPA ("any substance which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals, in or about the household. . . .") Although an argument could be made to the contrary, it is our opinion that catalytic converters in motor vehicles are not subject to Commission jurisdiction under the FHSA or PPPA.

The Commission would not be able to regulate catalytic converters in motor vehicles under the FFA, since catalytic converters clearly do not fall within the definitions of "fabric, related material, or product" (article of wearing apparel or interior furnishing) in Section 2 of the FFA.

Earlier Advisory Opinions on Related Jurisdictional Matters

Our interpretation of the jurisdiction of the Commission on this matter is consistent with earlier advisory opinions given by OGC on related jurisdictional matters, see, e.g.:

Advisory Opinion #48: Combination furnaces and water heaters used exclusively in recreational vehicles are motor vehicle equipment and are not subject to Commission jurisdiction.

Advisory Opinion #50: Trailer hitches are motor vehicle equipment and are, therefore, excluded from Commission jurisdiction.

Advisory Opinion #84: and #93 Automobile batteries are motor vehicle equipment; and, if used exclusively in motor vehicles, are not subject to Commission jurisdiction under the CPSA. (However, automobile batteries may be subject to required labelling under the FHSA.)

Advisory Opinion #155: Portable car ramps are motor vehicle accessories; and, if used exclusively in conjunction with motor vehicles, are excluded from Commission jurisdition under the CPSA.

Advisory Opinion #165: Jumper cables are motor vehicle equipment; and if used exclusively in conjunction with motor vehicles are not subject to Commission jurisdiction under the CPSA.

If the NHTSA and EPA have not already been notified, it would be advisable to refer this matter to those agencies for appropriate action.