UNITED STATES GOVERNMENT

Memorandum

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

#231

TO : Tom A. McKay, Director, OCR

DATE: JAN 1 1976

THRU : Margaret A. Freeston, Assistant General Counsel

FROM : Philip Bechtel, OGC
PB

CONSUMER PRODUCT SAFETY COMMISSION

SUBJECT: CPSC Jurisdiction over Lift-Off Aerial Baskets

It is the opinion of this office that the CPSC would not have jurisdiction over lift-off aerial baskets; since these products do not appear to fall within the definition of "consumer product" in the CPSA.

Section 3(a)(1) of the CPSA defines "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; "

6(b) CLEARED: 3/15/84
X No Mfrs Identified
Excepted
Mfrs Notified
Comments Processed

Section 3(a)(1)(A) excludes from the definition of "consumer product,"

> "any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer."

The correspondence submitted to this office does not indicate that Lift-Off aerial baskets are produced or distributed for any consumer use or enjoyment. There is no information to support a finding that this product is customarily sold or leased to, or used or enjoyed by consumers; and there is also no information to support a finding that the manufacturer or distributor of the product has fostered or facilitated its sale to or use by consumers. As a result, based on information contained in this correspondence, we do not believe that this product would fall within the jurisdiction of the Commission under the CPSA. Our interpretation on this matter is consistent with an earlier advisory opinion (copy attached) in which we concluded that the Commission would not have jurisdiction over work platforms mounted on motor vehicles.

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ADVISORY OPINION

The Occupational Safety and Health Administration (OSHA) may not have the authority to take regulatory action in regard to aerial baskets sold to municipalities; since the Occupational Safety and Health Act excludes from the definition of "employer," states or political subdivisions of a state (29 U.S.C. section 652(5)). However, you may wish to suggest that the Senator refer this problem to OSHA for their determination and possible action in occupational situations that fall within their jurisdiction.

Although this opinion is based on the most current interpretation of the law by this office, it is subject to being changed or superseded at a later date.

Attachment