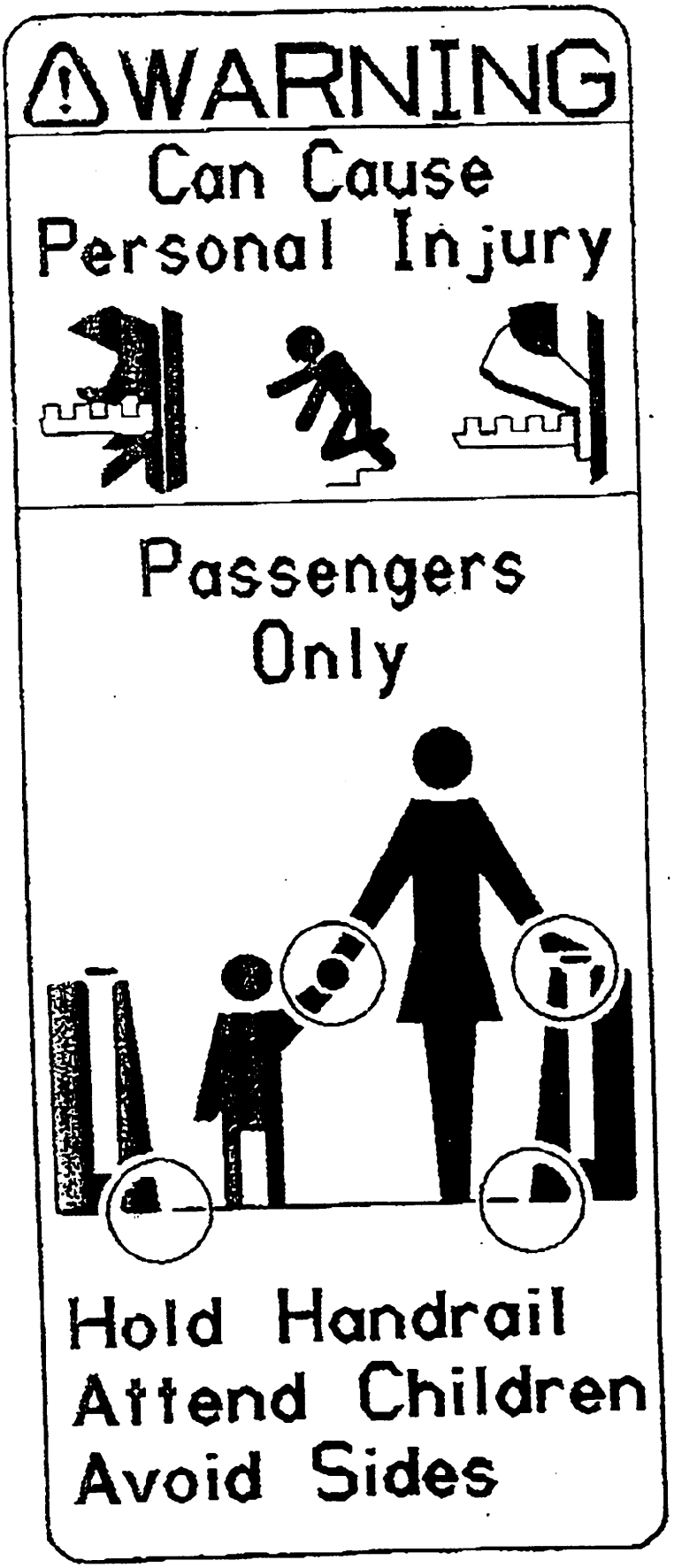
Attachment 10
Page 1 of 1



Consumer Product Safety Commission has asked for our input to the following:

A. A design that would close the gap between the moving stair and the sidewall;

In favor of 19 Against 3

Remarks: By Fop July 21 97

B. Notify the public how dangerous escalators can be and what type of accidents can occur while riding one;

In favor of 19 Against 3

Remarks: By Fop July 21 97 AM

C. Creating better warning signs that will educate and inform riders;

In favor of 20 Against 2

Remarks: By Fop July 21 97 AM

After you review, please send back to NAVTP's Main Office by fax or mail before July 5, 1997.

Please only return the ballot with your comments.

Signature

11 of 15

Time:	5:06 PM	Pages:	5
Duration:	1 min 34 sec	Sender:	7185315059
Date:	7/18/97	Company:	
Fax Number:		Subject:	
Type:	Fax	Pages Sent:	5

July 18, 1997

Consumer Product Safety Commission has the following comments which are against the following statements.

A. A design that would close the gap between the moving stair and the sidewall ;

1. Close maintenance of existing gap greatly reduces chance of accidents. Use of brush on skirt helps keep little toes safe.

2. Possibility of more shut downs causing falling accidents - would prefer to see- add on guards which protect riders.

B. Notify the public how dangerous escalators can be and what type of accidents can occur while riding one;

1. It is more important to educate people in the proper use of equipment as is being done by the Elevator/Escalator Safety Foundation.

2. This approach could have an opposite effect. The installation of the side step safety plate and the education of the rider is where the success will come.

C. Creating better warning signs that will educate and inform riders;

1. Present signs are ignored. If better signage is suggested, I would suggest suggest a serious review.

2. I would like to see the signed proposal. I have not seen a proposed improvement or the present "Caution Sign" requirement.

12 of 15

Time:	5:06 PM	Pages:	5
Duration:	1 min 34 sec	Sender:	7185315059
Date:	7/18/97	Company:	
Fax Number:		Subject:	
Type:	Fax	Pages Sent:	5

4. The owners of escalators must enforce these warning signs, provide monitors to oversee the use of escalators.

5. Better signage would be helpful, and audible messages, as reminders could add reinforcement to the need for riders responsibilities.

6. Although simple signs are already in use in various states, I am not sure of their success in educating riders. However, any improvement will help.

7. Educational awareness is essential. However, in addition to the visual warning signs, an audible warning or instructions is a necessity.

Time:	5:06 PM	Pages:	5
Duration:	1 min 34 sec	Sender:	7185315059
Date:	7/18/97	Company:	
Fax Number:		Subject:	
Type:	Fax	Pages Sent:	5

July 18, 1997

Consumer Product Safety Commission has the following comments which are in favor of the following statements.

A. A design that would close the gap between the moving stair and the sidewall;

COMMENTS:

1. The closer the better.
2. Less than 1/16" in. Plus must have plastic covering below step and behind riser of 3" in. Also between ridge of sharp edge of step.
3. Make retroactive to al existing escalators. Put requirements in ASME A17.3 Code for existing escalators. Allow 5 year grace period to install or shut units down.
4. This is a good step one, but he shirts must be strengthened also to prevent deflection 500lbf. Minimum to deflect 1/16" in.
5. Product already on market to eliminate gap. For reason only known by the major manufacturers. They refuse to utilize this device.
6. The design should eliminate clearance between moving step and the skirt. Skirt should be a friction reducing material.
7. Close maintenance of existing gap greatly reduces chance of accidents. Use of brush on skirt helps keep little toes safe.
8. Possibility of more shut downs causing falling accidents. Would prefer to see add on guards which protect riders.
9. Enforcing existing requirements for gap and skirt treatment.
10. There are two products available - step side plates and brush guards mounted on the step riser. One should be mandatory as a retro-fit. This is the best remedy.

11. A design has been in place for the last 14 years. Why are we still addressing this issue? Implement.

B. Notify the public how dangerous escalators can be and what type of accidents can occur while riding one.

COMMENTS:

1. Fund EESF, Safety Rider Publish Accident Info in newspaper.

2. Require building owners to send product use instruction to new clients (ex. Credit card holders) and post longer readable. Simplified instructions/ warnings at each unit boarding entrance.

3. Making the machine safe as comment A must be done. Notices cannot hurt but are not likely to help.

4. Improve media coverage of accidents and create an independent investigation body to examine escalators involved in accidents. Currently maintenance companies investigate accidents on units they maintain.

5. What we need is more education on proper usage, or safety precautions to be practiced, while riding escalators and moving walks - instead of more Plaintiff cases for riders' lack of taking personal responsibility while using the equipment.

6. Elevator World Safety Foundation should get Federal Grant to expand program.

7. Must be done properly with no media - exaggeration - otherwise more litigation will result.

C. Creating better warning signs that will educate and inform riders.

COMMENTS:

1. Must grab attention and hire a design consultant.

2. Restrict usage to adults unless children under age of 12 are accompanied by parent or adult guardian.

3. This is a good step one, but the shirts must be strengthened also to prevent deflection 500 lbf. Minimum to deflect 1/16" in.

Schindler Elevator Corporation

James L. Cooca
PRESIDENT

20 Whippany Road
P.O. Box 1935
Morristown, NJ 07962-1935

Telephone (201) 984-9500

CPSC/OFC OF THE SECRETARY
FREEDOM OF INFORMATION
97 JUL -0 P 4:44

July 21, 1997

Sadye E. Dunn
Office of the Secretary
Consumer Product Safety Commission
Washington, D.C. 20207

Re: Petition CP97-1 Regarding Development of a Safety Standard for Escalators

Dear Secretary Dunn:

On behalf of Schindler Elevator Corporation, I respectfully submit the following comments to the Consumer Product Safety Commission in response to its May 19, 1997 Notice regarding the referenced Petition. These comments are intended to complement those submitted by the National Elevator Industry, Inc., known as NEII, of which Schindler is a member. Schindler endorses and reiterates the points set forth in the NEII Comments, which compel the denial or, at the least, the deferral of this Petition. Our intention is to lend additional clarity to the more practical reasons for continuing the cooperative approach fashioned by NEII and the CPSC. Frankly, it is also intended to provide the CPSC with a balanced view of Schindler and its specific approach to escalator safety.

As one of the leading suppliers of escalators in the world, the safety of its escalators is paramount to everyone at Schindler. Schindler's history of investment in R&D, its continual improvements in new escalator design and the overall enhancement of mature equipment, as well as our extensive training and educational programs, underscore our acknowledged and proven commitment to escalator safety.

While accidents on escalators are rare given the estimated 180 million "rides" taken on them daily, an accident such as the one that occurred to the Petitioner's son on mature equipment is naturally one too many for them, as well as for Schindler and its safety-conscious employees. Despite the genuine concerns of the Petitioner and the CPSC, the CPSC's consideration of this Petition would be misplaced and may ultimately detract from escalator safety. The last thing that the riding public needs is to have the CPSC

attempt to mandate a solution of the moment on a product over which it has no jurisdiction and which Schindler has dramatically and steadily improved in safety and integrity.

It must be noted at the outset that despite the CPSC's clear lack of jurisdiction over escalators (See NEII Comments), Schindler and fellow manufacturers under the aegis of NEII, voluntarily stepped forward to embrace the CPSC and its challenge to further advance escalator safety. While Schindler simply could have relied on this solid legal principle and declined the CPSC's invitation of a year ago, our commitment to help ensure safe ridership was again demonstrated through our active participation. Furthermore, Schindler chose to commit the necessary financial and engineering resources to support the independent study being conducted with Arthur D. Little, Inc. for the development of a voluntary performance standard.

As noted in the NEII Comments, while there is an irrefutable lack of CPSC jurisdiction over the escalator product, Schindler and the industry nonetheless remain prepared to cooperate with the CPSC on this matter of obvious mutual interest. This cooperative effort is a natural complement to Schindler's ongoing commitment to the improvement of safety for the riding public and our children. This Schindler commitment is reflected in many ways and has yielded tangible results. Schindler has achieved ISO 9001 certification, an internationally recognized system of quality management standards, the first and only escalator company in the United States to achieve this accreditation. This certification covers our engineering, manufacturing and field service operations. The strength of Schindler's quality system was recently reaffirmed by Quality New Jersey's (QNJ) presentation of its prestigious Quality Partner Award. QNJ, a private/public partnership with New Jersey State Department of Commerce and Economic Development, is dedicated to Total Quality Management in New Jersey. Criteria for this award are the same as those employed by the Malcolm Baldrige National Quality Award.

As a key part of its quality process, Schindler has formed teams at each of its offices throughout the United States dedicated to improving equipment safety and reliability through a variety of means. These teams, with headquarters support, have had a significant impact on overall escalator safety, resulting in the product liability claims rate being reduced significantly since 1990. In addition, Schindler representatives participate on national code committees and all Schindler equipment meets national ANSI and ASME safety codes. Schindler also develops and offers for sale equipment upgrades that bring existing, mature equipment up to the latest code requirements.

Though arguably among the world's safest forms of transportation, what remains true of escalators is true of all forms of transportation: even at their safest operation, some element of risk remains. The manufacturers, owners, service providers, inspectors and passengers must all take responsibility for safety. Schindler has made a concerted effort to assist both equipment owners and the riding public to better understand safety issues through extensive education programs and awareness campaigns. Among other things, Schindler has developed a Safety Education Program consisting of an informative video and booklet dealing with safe ridership and proper equipment use. Schindler has distributed tens of thousands of copies of these educational videos and booklets in both English and Spanish versions. Schindler is a founding member of the Elevator and Escalator Safety Foundation, which is dedicated to educating the public about the safe and proper way to ride escalators and elevators. Of particular note is the Foundation's "Safe-T-Rider" program for children, which has been presented to over 1,000,000 children, parents and teachers throughout the nation since it was launched in 1991. Schindler provides both financial and extensive non-financial support to the Foundation, and has donated our highly regarded *"Ups & Downs"* safety video for the Foundations use. This Schindler film has become the backbone of "A Safe Ride", the Foundation's recently released videotape promoting safety and educating passengers regarding proper escalator usage.

The CPSC could be on the verge of doing more harm than good by attempting to mandate solutions, thereby interfering with Schindler's research and development efforts that have brought steady gains in our escalator safety. We, with the cooperation of our customers, have been able to reduce entrapments between the escalator step and skirt by approximately 75 percent from 1990 to 1996. This was done largely as the result of research and analysis revealing the impact of timely treatments of silicon, an anti-friction coating.

We have also recently developed a unique side-guidance system that maintains a minimal gap between the steps and side skirt, and a handrail motion detector that sets off an alarm to alert riders if it senses any problems in synchronization. We have also made emergency stop buttons more prominent, and installed high-tech switches that can detect problems with steps. These are just a few examples of how Schindler continuously uses new knowledge and experience to advance escalator safety.

The sensibility of allowing the current "voluntary" approach with the CPSC to continue is therefore overwhelming. The Petition, despite its sincere intentions, cannot be heard by the CPSC. It simply has no jurisdiction or authority to do so. But, as I have noted throughout this commentary, there are far more important reasons for declining than mere legal and regulatory proscriptions.

Simply put, the voluntary approach is the only way of effectively achieving the additional success we all strive for in escalator safety. On behalf of Schindler, thank you for your consideration.

Very truly yours,

James L. Cocca

James L. Cocca
President

National Elevator Industry, Inc.

ASSOCIATION HEADQUARTERS:

185 Bridge Plaza North • Room 310 • Fort Lee, New Jersey 07024 • (201) 944-3211 • Fax: (201) 944-5483

RESPOND TO:

July 21, 1997

BY HAND COURIER

The Office of The Secretary
Consumer Product Safety Commission
4330 East-West Highway
Bethesda, Maryland 20814-4408

Re: Petition CP 97-1 Requesting Development of Mandatory Standards for Escalators

Dear Madam:

The National Elevator Industry Inc. ("NEII") appreciates the opportunity to provide comments and respond to the Consumer Product Safety Commission's ("CPSC" or "Commission") notice concerning the petition from Scott and Diana Anderson for the development of a mandatory standard for escalators (the "Petition"), 62 Fed. Reg. 28,005 (May 22, 1997). NEII is a trade association consisting of manufacturers, installers, and maintainers of elevators, escalators and moving sidewalks. There are presently thirty-four members of NEII, including all major domestic manufacturers, installers and maintainers of escalators. Consequently, NEII has a specific interest in and substantial expertise concerning the Commission's consideration of the above-referenced Petition.

WA01A/122616.2

I. Introduction

NEII has a long history of identifying and addressing any issues relating to escalator safety. NEII members have participated actively in establishing the American Society of Mechanical Engineers ("ASME") Elevator and Escalator Safety Committee, and in developing the initial escalator safety standards published in 1921. Once ASME safety standards are developed and adopted by the A17 Committee,[1/] NEII and its members spend considerable resources ensuring that state and local authorities are aware of, adopt and enforce compliance with the voluntary standards. NEII and its members have directed significant time and resources to educate users of escalators about safety and its members participated in the establishment of the Elevator and Escalator Safety Foundation. Consequently, the industry always has considered as part of its responsibility the need to have in place appropriate safety standards and to adjust those standards when necessary. This long history of voluntary and successful NEII activity clearly demonstrates that the industry can properly regulate itself and that there is no need for direct federal government regulation of the industry. This view is also supported by the American

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1/ The ASME A17 Committee is an independent and voluntary, consensus-based standards-setting organization operating under ANSI procedures. ASME A17 Committee includes representatives of many individuals whose organizations are interested in escalator safety standards, (e.g. building owners/operators, insurance companies, inspection authorities, engineering consultants and users. The ASME consensus process also requires that every member's views, concerns, and proposals be resolved to the satisfaction of the individual before the Committee can proceed to adopt or deny a proposed action. ASME's standards are adopted and enforced by state and local authorities.

Society of Mechanical Engineers, A17 Main Committee responsible for writing and revising the safety code for escalators and elevators.[2/]

NEII believes that escalators, when properly installed and maintained in compliance with existing voluntary safety standards, are one of the safest modes of transportation. Therefore, for all of the above reasons, federally-mandated safety standards for escalators are not authorized, warranted, or necessary and the CPSC should deny the Petition.

In addition to the industry's historical success regarding safety, thus precluding any need for federal intervention, there is no legal basis for the Commission to accept the Petition. As NEII has consistently asserted to the Commission, escalators are not consumer products, as that term is defined in Section 3(a)(1) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2052(a)(1) and, thus, are not within the jurisdiction of the CPSC. Therefore, pursuant to the statute and CPSC's own regulations at 16 C.F.R. 1051.6(a), the Commission must deny the Petition.

2/ See Comments of American Society of Mechanical Engineers to Consumer Product Safety Commission re: Petition Requesting Development of Safety Standards for Escalators, comment No. CA97-2-4 at 1, (June 17, 1997).

Further, assuming arguendo that escalators could be considered to be consumer products within the jurisdiction of the Commission, assertion of jurisdiction would be nonetheless unwarranted in view of the on-going work of NEII and its commitment to act voluntarily when necessary to address safety issues, and the commitment of the Safety Code for Elevators and Escalators Committee of ASME to consider information and proposals related to escalator safety.[3/] Initiation of a rulemaking procedure at this time could jeopardize all such activities and possibly delay the otherwise expeditious consideration of modifications to the applicable voluntary standards. In addition, a decision by CPSC to allow the voluntary standards-setting process a reasonable amount of time to effect a change, if determined to be necessary, in the voluntary escalator standard, would be consistent with existing federal policy requiring federal agencies to defer to voluntary standards processes in order to enhance the utility of such standards and to decrease allocation of federal resources to such activities. Consequently, in the spirit of this policy of deferral to the voluntary standards process, NEII strongly recommends that the Commission deny or, at a minimum must defer consideration of, the Petition.

3/ Id. at 2.

II. Escalators Are Not Consumer Products

There is no legal basis for CPSC to accept the Petition because escalators are not consumer products within the definition of that term in 15 U.S.C. §2052(a)(1). A consumer product is defined in §2052(a)(1) as:

> ... any article. . . 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.

The CPSA excludes from this definition any article which is not customarily produced or distributed for sale to, or use or consumption by or for enjoyment or recreation, of a consumer. 15 U.S.C. § 2052(a)(1)(A). Thus, Congress did not intend for the Commission to have jurisdiction over every product to which consumers have contact or are exposed, but only those products used personally and individually by consumers around their personal environs, for their personal enjoyment or recreation.[4/]

4/ The CPSA was amended in 1981 to clarify that mechanical devices such as monorail and other amusement park rides, which have a fixed location, are not consumer products within the jurisdiction of the CPSC. Thus, Congress specifically narrowed both the definition of consumer product, by specifically including precise language as to which amusement park rides are covered, and limited the Commission's jurisdiction to this narrow class of mechanical devices. See Omnibus Budget Reconciliation Act of 1981, H.R. Rep. No. 97-208, 97th Cong., 1st Sess., (1981) (enacted), reprinted in 1981 U.S.C.C.A.N. 1250.

There is a series of judicial decisions relating to the proper interpretation of the statutory language in §2052(a)(1), as discussed below. These decisions have identified a number of factors to assist in determining whether a product is a consumer product. These factors include the method of distribution of the product, whether consumers have ownership or control over the product, whether the product is ordinarily or customarily used by consumers in or around the home or similar locations, and whether the product is used ordinarily or customarily by consumers for personal enjoyment, recreation or otherwise. Because escalators do not meet any of these factors, they cannot properly be concluded to be consumer products and the Petition must be denied.

The only judicial decision to directly address whether escalators and similar transportation devices can properly be considered consumer products concluded that escalators do not meet the definition. In CPSC v. Chance Mfg. Co., 441 F. Supp. 228 (D. D.C. 1977), the court stated that although it found that an amusement ride is within the definition of a consumer product, its holding does not apply to "other forms of conveyance, [such] as elevators, escalator, [and] subways. . ." because they are not used in or around the home or school, in recreation or otherwise. The court concluded that a ride on an elevator or escalator is taken solely for transportation with the purpose of reaching a final destination, not as an end in itself, such as with an amusement ride. Id. at 233-34. Consequently, escalators could not properly be

considered to be consumer products. The propriety of the court's reasoning was supported by the 1981 statutory amendment to the CPSA, which exempted from the Commission's jurisdiction amusement park rides which have fixed locations.[5/]

A. Escalators Are Not Distributed Or Sold To Consumers.

Several courts have held that, in order to be considered a consumer product, the product must be sold or distributed as an independent product directly to consumers. For example, in CPSC v. The Anaconda Co., 593 F.2d 1314 (D.C. Cir. 1979), the court held that aluminum branch circuit wiring could not be determined to be a consumer product unless it was found to be customarily sold directly to consumers, independent of the houses in which the wiring is installed. Id. at 1321. Using the same analysis in ASG Indus., Inc. v. CPSC, 593 F.2d 1323 (D.C. Cir. 1979), cert. denied sub nom. Flat Glass Ass'n v. CPSC, 444 U.S. 864 (1979), the court determined that wired architectural glass is a consumer product because it is customarily marketed as an independent article directly to consumers for use in or around the home or school. Id. at 1328. The court further noted, consistent with the approach set out in Chance Mfg. Co., supra, that the definition of consumer product in §2052(a)(1) has two elements including: (1) location of use, i.e., use in or around a permanent or temporary household or residence or school, and (2) purpose of use, i.e., for recreation or otherwise. Id, at 1328. In

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5/ Id.

the D.C. Circuit's view, unless a product meets both of the elements, it cannot be considered a consumer product.

Escalators clearly do not meet these judicial criteria of direct distribution. Consumers do not purchase or obtain escalators for installation or otherwise. Escalators are ordinarily sold to building owners or contractors who own or build a facility to contain an escalator or who are separately hired to install an escalator in a fixed-site location. Escalators must be maintained by highly skilled technicians employed by the original equipment manufacturer, an escalator service company, or the owner of the escalator. Consumers thus are not involved at any point or in any way with the purchase, distribution or installation or maintenance of escalators.

B. Consumers Exercise No Ownership or Control Over Escalators

In addition to evaluating whether the product is sold or distributed independently and directly to consumers, courts have also reviewed whether or not the consumer owns or exercises control over the products. In Robert K. Bell Enter., Inc. v. CPSC, 645 F.2d 26, 28-29 (10th Cir. 1981), and Walt Disney Prod. v. CPSC, No. 79-01-70-Lew. - (Px)(Slip Op.) (C.D. Cal. 1979), rev'd on other grounds, 649 F.2d 870 (9th Cir. 1981), two cases involving amusement park rides, both courts held that products which are not controlled by consumers cannot properly be considered consumer products. As noted above, the installation, maintenance, and operation of

escalators are not within the ownership or control of consumers at any point. Indeed, the sheer size and complexity of escalators, and the varied conditions under which they are operated (e.g., inside, outside, multi-story, continuous, etc.) make it imperative to have highly skilled technicians and operations staff who constantly monitor and maintain escalators for compliance with the existing voluntary escalator safety standards, local regulations, and equipment specifications. Consequently, as with large monorails and other modes of transportation over which riders have no control, escalators also must be considered to be outside of the CPSC's jurisdiction.

C. Escalators Are Not Ordinarily or Customarily Used By Consumers In Or Around The Home Or School

The decisions in Chance, ASG and Robert K. Bell Enterprises all held that in order to be considered a consumer product, the product had to be used in or around the home or school or similar environs. Escalators are generally not used in or around the home or school or similar locations but, rather, are used exclusively at large commercial facilities requiring vertical transportation for large numbers of people.

D. Escalators Are Not Ordinarily or Customarily Used For Personal Enjoyment, Recreation Or Similar Uses By Consumers

The definition of consumer product requires an article to be produced or distributed for the personal use, enjoyment or recreation of consumers. See 15 U.S.C. §2052(a)(1)(ii). Escalators are used exclusively as a mode of transportation. They are not used as forms of amusement or entertainment. The decisions in Chance and Robert K. Bell Enter. require that the use to which the product is put must enhance the personal enjoyment or recreation of the consumer to constitute a consumer product within the jurisdiction of the CPSC. Neither consumers nor the escalator industry have such expectations for escalators.

Thus, escalators do not meet any of the principal factors that the courts have identified as essential to finding that a product is a consumer product subject to the Commission's jurisdiction. Because the CPSC does not have jurisdiction over escalators, it is required by its own regulations to deny the Petition. 16 C.F.R. §1051.6(a). Failure to deny the Petition would be arbitrary and capricious, and in excess of CPSC's statutory jurisdiction in violation of the Administrative Procedure Act, 5 U.S.C. §706(2)(A) and (C). See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto Ins. Co., 463 U.S. 29,43-44 (1983).

III. CPSC Should Deny, or at a Minimum Defer Consideration of, the Petition, Pending Completion of Review of the Voluntary Escalator Standards

Although there is no legal basis to accept the Petition because escalators are not consumer products within the jurisdiction of the Commission, if the Commission nonetheless decides

preliminarily to respond to the Petition, NEII respectfully submits that the Commission must deny, or at a minimum defer consideration of, the Petition, consistent with NEII's continuing efforts to address escalator safety. As evidence of the industry's efforts, NEII has initiated an important study relating to the step-to-skirt clearance and has undertaken related efforts with the A17 Committee to consider possible modification of the applicable voluntary safety standards on escalators. Thus, the two organizations with the most expertise concerning escalator safety have committed to review these issues.

As the Commission knows, NEII members have committed significant resources to fund a study concerning the step-to-skirt clearance with the nationally-recognized engineering consulting firm, Arthur D. Little, Inc. Denial of the Petition would be consistent with the federal policy to defer to voluntary standards processes, as established by both the President and Congress. In addition, deference to the voluntary standards process would be consistent with Chairman Brown's commitment that the Commission would rely on and, in the first instance, look to the voluntary standards process to achieve objectives relating to product safety.

With respect to development of product standards, the federal government, including the Commission, is directed to use, whenever possible, standards developed by private, consensus organizations. This policy is set out in Office of Management and Budget (OMB) Circular No.

A-119 (Oct. 20, 1993), and the passage of Section 12 of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"). The premise of both of these directives is that, in order to enhance the competitiveness of U.S. goods and services, they must meet reliable standards. The federal government acknowledges that many of the most reliable standards are available from and reflect the expertise of industry. Further, both directives acknowledge that adoption of voluntary industry standards eliminates the cost to the government of the development of the standards and often results in a more cost-effective and workable standard for industry and for the general public.

OMB Circular A-119 states that voluntary standards should be given preference over non-mandatory government standards unless use of such voluntary standards would adversely affect performance or cost, reduce competition, or have other significant disadvantages.[6] Further, it

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6/ OMB Circular A-119 states that it is the policy of the federal government in its procurement and regulatory activities to:

a. Rely on voluntary standards, both domestic and international, whenever feasible and consistent with law and regulation pursuant to law;

b. Participate in voluntary standards bodies when such participation is in the public interest and is compatible with the agencys' missions, authorities, priorities, and budget resources; and

c. Coordinate agency participation in voluntary standards bodies so that (1) the most effective use is made of agency resources and representatives; and (2) the views expressed by such representatives are in the public interest and, at a minimum, do not conflict with the interest and

(continued...)

directs that agencies should not be prohibited, when acting within their statutory authorities, from developing and using government standards in the event that voluntary standards bodies cannot or do not develop a needed, acceptable standard in a timely fashion. Thus, OMB Circular 119 requires that federal agencies consider and adopt voluntary standards in the first instance if they are adequate and appropriate to the circumstances and can be developed in a timely fashion.

Likewise, Section 12 of the NTTAA, signed by President Clinton, directs federal agencies to increase their use of voluntary consensus standards whenever possible. See Section 12 (a), P.L. 104-113, 110 Stat. 776, 782-83 (104th Cong. 1996). This provision received bipartisan support in Congress. The strength of congressional support of this provision was evidenced by the remarks of Representative Brown who stated:

> it is much cheaper and more efficient for the government to rely on the hard work and expertise of these (private sector) committees rather than reinventing the world. These groups are better equipped than the government to understand all points of view and to keep up with the state of the art in technical standards.[7/]

6/(...continued)

established views of the agencies.

7/ Congress and ANSI Members Applaud Passage of National Technology Transfer and Advancement Act, L.A. Times, Apr. 2, 1996 at Financial News (quotation of Representative Georgia Brown (D-CA.).

The NTTAA also reflects the significant congressional interest in protecting the ever-scarcer resources of federal agencies.

Chairman Brown also has consistently stated prior to and throughout her tenure at the Commission that she favors working with industry to enact voluntary standards when possible and appropriate. For example, Chairman Brown stated in her statement to Senator Bryan at her nomination hearing that [if] confirmed, I will adopt a balanced approach to regulation, favoring voluntary compliance and standards whenever possible."[8/] In addition, in response to a question from Senator Gorton at the nomination hearing, concerning the Chairman's views of voluntary safety standards, the Chairman stated that:

> . . . [t]he best way for us to go in the ideal world are voluntary standards, but with these caveats: They must be voluntary standards that are complied with, that are effective, and that come to pass in a meaningful amount of time that is not laggardly. But voluntary standards are by far the most effective way if the three caveats that I mentioned are adhered to. They should not take a very long time.[9/]

Further the Chairman stated that although she would be willing to pursue mandatory standards if voluntary standards did not get enacted,

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8/ Nomination of Ann Winkel Brown to be Commissioner and Chairman of the Consumer Product Safety Commission, Hearing Before the Committee on Commerce, Science, and Transportation, 103d Cong., 2d Sess. 6 (Feb. 9, 1994).

9/ Id. at 12.

> ... it is far preferable for all of us to come together for the Commission to actually encourage, with the standard-setting programs and with the various industries, voluntary standards. The industries know what they need best of all. They are our best experts.[10/]

Thus, Chairman Brown began her chairmanship with a commitment to encourage and defer to voluntary standards when appropriate. Since her confirmation, the Chairman has continued to assert that voluntary standards are the preferred route and that mandatory standards are the court of last resort.[11/]

In addition to Chairman Brown, the CPSC staff has previously indicated to the escalator industry and ASME A17 Committee that it prefers to allow the industry to develop an appropriate voluntary standard if possible. For example, at a presentation by CPSC staff personnel at the ASME A17 Committee meeting in October 1996, Mr. Scott Snyder stated that it was the Commission's view that the CPSC would like to help reduce or eliminate escalator injuries by working with the voluntary standards committee of the A17 main committee of ASME.[12/]

10/ Id.

11/ See "Brown Says The Voluntary Standards Process Needs Consumer Involvement, More Speed," Product Liability Daily (BNA) at 804 (August 4, 1994).

12/ See Slide presentation of Mr. Scott Snyder, to A17 ASME Committee, October 1996.

Thus, in the spirit of both the prevailing federal policy and Chairman Brown's own principles of supporting voluntary standards in general and of working together with this industry in particular, the Commission must deny this Petition. The escalator industry has had a long history of responsibly and expeditiously addressing escalator safety issues, both through NEII and in connection with ASME. NEII has adopted policies and procedures for its members which foster adherence to the ASME voluntary safety standard. NEII also has spent considerable resources and time working with state and local authorities to have the ASME standard and relevant amendments adopted and enforced. Modifications reflecting the views of all the members, including the user community, to the voluntary standard can be proposed and acted upon expeditiously by ASME. Thus, the ASME voluntary standards meet Chairman Brown's three criteria for voluntary standards: the industry complies with them, they are effective, and they are reviewed and modified expeditiously.

In connection with the Commission's recent questions concerning escalator safety, NEII has worked expeditiously to not only identify the relevant issues and authorized and funded a study with a well-qualified consulting firm, but also to make a detailed filing with the Department of Justice to obtain a Business Review Letter to ensure that the industry's efforts are consistent with the antitrust laws. All of these activities have been accomplished in little more than one year from the initial meeting with the Commission concerning escalator safety issues. NEII also

has committed to consult with the ASME A17 Committee after completion of the study to determine whether any modifications to the voluntary safety standard should be made. The escalator industry has demonstrated through these activities its commitment to work quickly and allocate the necessary resources to address the issues raised by the Commission.

CPSC denial of the Petition will allow CPSC and the escalator industry to continue to work expeditiously and cooperatively together on the voluntary safety standard. Diversion of industry expertise and monetary resources away from this cooperative effort to an onerous rulemaking procedure will certainly not expedite the process and may interfere significantly with it.

Finally, denial of the Petition will avoid the unnecessary use of scarce Commission resources. As both the OMB directive and the NTTAA acknowledged, reliance on industry to fund development of voluntary standards is an efficient way to preserve the resources of the federal government and direct them to those projects for which there are no alternative sources of expertise or funding. In view of the inability of the Commission to obtain significant additional budgetary resources in the last several years, and the willingness of the escalator industry to use its own resources and funds to address these issues, it is only prudent for the Commission to deny the Petition for these reasons as well.

NEII continues to look forward to working with the Commission in the voluntary standards process to address escalator safety. NEII has a genuine interest in providing a safe and reliable product which serves both the riding public and facility owners and intends to take those actions necessary to achieve those objectives.

Sincerely,

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WA01A/122616.2