



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

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OCT 24 2000

Scott and Diana Anderson
6146 Piping Rock
Houston, TX 77057

Dear Mr. and Mrs. Anderson:

This letter concerns your petition (No. CP 97-1), which asked the Consumer Product Safety Commission to develop a mandatory safety standard for escalators to: (1) close the gap between the moving stairs and the sidewall; (2) notify the public about how dangerous escalators can be and what type of accidents can occur while riding one; and (3) create better warning signs. We also acknowledge and thank you for your letter of September 27, 2000 discussing your petition. For the reasons given below, the Commission has denied the petition.

The statute that would authorize the type of standard that you request is the Consumer Product Safety Act (CPSA), 15 U.S.C. §§ 2051-2084. Section 9(i) of the CPSA provides that the Commission may deny a petition on the basis of a voluntary standard if it makes three findings. These are that the voluntary standard: (1) is in existence; (2) adequately reduces the risk of injury identified in the petition; and (3) is likely to be substantially complied with. 15 U.S.C. § 2058(i).

Due no doubt in part to your petition, the National Elevator Industry, Inc., the trade association of the major U.S. escalator manufacturers, has worked with the American Society of Mechanical Engineers (ASME) to develop an escalator performance index to reduce the risk of entrapment injury identified in your petition. That effort resulted in incorporation of the performance index into the revised ASME A17 escalator safety code, which was approved by ASME in early August 2000. The Commission has found that the revised version of ASME A17 meets the requirements of § 9(i) of the CPSA. The basis for this finding is described below.

The ASME Escalator Standard "Exists"

Section 9 of the CPSA states that "a voluntary standard shall be considered to be in existence when it is finally approved by the organization ... which developed such standard, irrespective of the effective date of the standard." 15 U.S.C. § 2058(b)(2). Final ASME approval of the revised A17 escalator code occurred in early August 2000, thus satisfying the statutory "in existence" criterion.

The ASME standard will adequately reduce the risk of injury identified in the petition

The Commission has concluded that the new ASME A17 escalator code will adequately reduce the risk of sidewall entrapment injury identified in your petition. This conclusion is based on the fact that, to comply with the new A17 code, manufacturers must reduce the gap between the moving stairs and sidewalls of escalators and/or reduce the friction potential of the sidewalls so they will be significantly less likely to catch body parts or clothing and initiate entrapments.

As the ASME A17 code is incorporated into municipal, county and state building codes, many existing escalators will be retrofitted with deflectors that will further reduce the risk of injury from sidewall entrapment. As requested in your subsequent letter of September 27, 2000 concerning the petition, the CPSC will actively monitor the rate at which the new escalator standard is adopted into those codes. Also as requested in your letter, the CPSC will, as it already does with a vast spectrum of consumer products, continue to monitor the ongoing effectiveness of the new standard in reducing sidewall entrapment injuries.

Because the Commission has found that the new A17 standard will adequately reduce the risk of entrapment injury and thus satisfies the criteria for denial of a petition, it is denying the portion of your petition requesting that the CPSC undertake a public education program. However, our Chairman has committed to work with you and the industry to improve the current information and education program to specifically address the risk of entrapment injury.

Finally, the Commission has accepted the staff's recommendation that while escalator warning signs could be improved, the improvements would probably contribute little to additional escalator safety. Thus, again, the criteria for denial of a petition are satisfied, and the portion of your petition requesting improvements in warning signs is denied. Nevertheless, CPSC staff will work with the ASME standards-setting group to improve the warning signs in the A17 standard.

Substantial compliance with the ASME code is likely

The CPSC has received letters from the major escalator manufacturers responsible for 99% of the U.S. market committing that all new escalators sold by them in the U.S. will comply with the ASME code. The ASME code will be gradually incorporated into mandatory building codes throughout the country. This satisfies the "substantial compliance" requirement of § 9(i) of the CPSA.

Commissioner Gall's Position

Commissioner Gall joined with the other Commissioners in voting to deny the petition, but did so for different reasons. Commissioner Gall believes that the record developed by the staff demonstrates that escalators are not consumer products within the meaning of the Consumer Product Safety Act. Accordingly, Commissioner Gall believes that the Commission does not have jurisdiction to promulgate a mandatory safety standard for escalators and must deny the petition. The separate statement of Commissioner Gall in this regard is available from the Office of the Secretary.

Scott and Diana Anderson

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In closing, the Commissioners have asked me to convey their heartfelt thanks to you for bringing this matter to the attention of the CPSC in a most constructive way. Your initiative and resolve to see this matter through are facilitating a nationwide improvement in escalator safety through the revised ASME code and the ongoing efforts of the CPSC outlined above. We hope that you will continue to work with the CPSC in this fashion in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd A. Stevenson". The signature is fluid and cursive, with a large initial "T" and "S".

Todd A. Stevenson
Deputy Secretary



THE CHAIRMAN

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D C 20207

**Statement of the Honorable Ann Brown
Denying Petition to Develop a Mandatory Standard For Escalators**

October 3, 2000

I join with my colleagues in voting to deny the petition filed by Scott and Diana Anderson requesting that the Commission develop a mandatory product safety standard for escalators. The Petition was given serious and thoughtful consideration, but there are several reasons why substantial progress has been made in addressing potential escalator entrapment injuries without regulation at this time.

First, the courageous effort of Scott and Diana Anderson has been a major catalyst for our success. There are hundreds of serious injuries that occur from escalator entrapments -- much like the tragic entrapment injury that caused a serious foot injury to their son Scooter in 1996, who was only four years old at the time. Scooter lost three toes, suffered permanent injury to his foot, and spent two months in a wheelchair as a result of this horrible escalator entrapment. Since that time, Scott and Diana Anderson have worked tirelessly with CPSC staff to address escalator entrapments. As an engineer, Scott Anderson has been able to understand and evaluate much of the work that has been done. Diana Anderson has been vigilant in her efforts to educate others on escalator safety and the entrapment danger.

Second, working with CPSC staff, the escalator industry has made substantial progress in addressing escalator entrapments. The industry funded a comprehensive research project conducted by Arthur D. Little, Inc. to better understand how entrapments occur and what can be done to reduce them. The research provided the basis for the industry to develop proposed changes to the escalator safety code. In fact, these changes have already been incorporated into the latest version of the code. Most important, industry has assured the Commission that it is pressing for quick adoption of the new code changes throughout the country and that all new escalators will meet these codes even before adoption. I am confident that the new standard will result in substantial reductions in entrapment injuries.

Third, unlike the voluntary standard, a mandatory standard would take years before it became effective. Moreover, a mandatory standard would not be retrospective and would not reach old escalators. The changes to the escalator safety code will quickly result in safety improvements in new and existing escalators. Once the code is adopted it becomes mandatory. In addition, CPSC staff will monitor the progress of industry's efforts to ensure the adoption of the new safety code at the state and local level, and to work with the escalator safety code officials on improving safety signage. Finally, I intend to work with leaders of the escalator industry to improve current public information and education efforts. I again wish to thank Scott and Diana Anderson for their heroic efforts in providing a catalyst for the safety improvements made on escalators. We at CPSC believe this cooperative effort will prevent further tragic injuries.



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

**STATEMENT OF THE HONORABLE MARY SHEILA GALL
DENYING PETITION TO DEVELOP A MANDATORY
STANDARD FOR ESCALATORS**

September 28, 2000

I join with my colleagues in voting to deny the petition requesting that the Commission develop a mandatory product safety standard for escalators. I do so, however, because I do not believe that escalators are “consumer products” within the meaning of Section 3(a)(1) of the Consumer Product Safety Act. The Commission, therefore, lacks authority to promulgate a mandatory consumer product safety standard for this product, and must deny the petition.

Statute

Section 3(a)(1) of the CPSA defines consumer product:

The term “consumer product” means 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; but such term does not include—

(A) any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer

There is no contention that escalators are consumer products because they are sold to consumers. Whether an escalator is an article customarily produced for consumers to use personally in or around a permanent or temporary household or residence, a school, or in recreation, has never been decided by a court. The Commission’s Office of General Counsel (OGC) has consistently taken the position that escalators are consumer products. Escalator manufacturers have just as consistently denied that escalators are consumer products even as they worked with Commission staff to change the voluntary standard and to respond to Commission subpoenas and special orders. The record shows that consumers do not personally use escalators within the meaning of the CPSA and that escalators are not customarily produced or distributed for use by consumers. Federal regulation of escalators is not necessary to protect either interstate commerce, or the safety of consumers, and that attempted enforcement action on escalators risks bogging the Commission down in complicated questions of maintenance and warranties.

Use of Escalators

Section 3(a)(1)(ii) of the CPSA requires that a consumer product be for the personal use of a consumer. The word “use” can be used to express a wide range of relationships that a consumer may have with a product. In the case of escalators, however, that relationship is about as fleeting as it can be: the consumer steps onto the product, rides the product and leaves the product. While courts have found that other products with which consumers have only incidental contact to be consumer products (e.g., architectural glazing in *ASG Industries, Inc. v. Consumer Product Safety Commission*), these products were sold to consumers for incorporation into residences or schools. The use, therefore occurred in or around places specified by the statute. In the case of escalators, the information developed by the staff indicates that about two percent of escalators are installed in schools and less than one percent are installed in churches and long-term residences, respectively. The exception of CPSA Section 3(a)(1)(A) (excluding articles not *customarily* produced or distributed for sale to or use by consumers) eliminates this argument that escalators are consumer products.

In order, therefore, for consumer interaction with escalators to constitute “use,” it must be in or around a temporary residence, in recreation, or otherwise. Many escalators are installed in hotels and people do reside temporarily in hotels. But here the term “personal use” has meaning. Hotel escalators are not for the personal use of those members of the public residing temporarily in hotels; rather, they are for the collective use of all members of the public with legitimate business at the hotel, as well as hotel employees. Consumers do not use escalators “in recreation” in the sense that they derive a recreational benefit from their trips on escalators. Rather, they use escalators to get to and from the place of the recreation. Finally, the “or otherwise” portion of the statute could be read to confer Commission jurisdiction on virtually any form of common carrier (e.g., monorails, cable cars, funiculars, and possibly even subways or elevated trains.) Without specific Congressional direction on such matters (such as that received in the case of fixed versus mobile amusement rides) the Commission should decline to undertake such an expansive reading of the statute.

Safety of Consumers and Burden on Interstate Commerce

Congress passed the CPSA and created the Commission, *inter alia*, to protect the public against unreasonable risks of injury associated with consumer products and to minimize conflicting State and local regulations concerning consumer products. (CPSA Section 2(b)(1) and (3)). Because of the nature of escalators and their regulation by local building codes, regulating escalators as consumer products will further neither of these policy objectives. As pointed out by the staff’s briefing package, the only jurisdictions too small to have a building code are too small to have an escalator. These building codes incorporate the safety requirements contained in the American Society of Mechanical Engineers Voluntary Standard A17. The Commission staff has identified no existing deficiency in this standard. Thus, consumers are protected by mandatory rules at the local level that incorporate the best technical thinking on the subject of escalator safety. A mandatory federal standard would add nothing.

The existence of Voluntary Standard A17 also reduces the burden on interstate commerce. The five manufacturers of escalators that dominate the U.S. escalator market need not design and manufacture escalators to conflicting local building codes. Moreover, even if local building codes do differ somewhat in matters outside the scope of Voluntary Standard A17, escalators are sufficiently large and complex, and their installations sufficiently location specific, that escalator manufacturers can easily adapt their designs to conform to local building codes. Thus, the existence of local regulations does not impede interstate commerce in escalators and there is no need for a federal role.

Difficulty of Enforcement

The final reason why escalators are not consumer products is that the remedies available to the Commission under CPSA Section 15 are not well suited to the realities of escalator hazards. The record has revealed that many escalator hazards are associated with the poor maintenance of escalators. In ordinary recalls, the Commission orders the manufacturer, at the manufacturer's option, to repair or to replace the defective product, or to refund the purchase price of the item, less a reasonable allowance for use. But an order to a manufacturer will do little good if the problem is the maintenance of the escalator. In such a case, the Commission would have to: (1) deem some entity to be the "retailer" of the escalator; (2) order the retailer to make the needed repairs or undertake the needed maintenance; (3) supervise the repair/maintenance program; and (4) possibly adjudicate warranty claims and disputes between the escalator manufacturer and the escalator operator over the responsibility for the repair and maintenance program. While such a program may not be beyond the Commission's capabilities, its very complexity suggests, given the other evidence, that escalators are not consumer products.

Conclusion

Despite my position that escalators are not consumer products, and that the Commission has no jurisdiction over them, I do wish to commend both the escalator industry and the Commission staff for the work done to improve the voluntary standard. Escalator users are safer because of these improvements. This does not alter my conviction, however, that for the reasons set forth above, escalators are not consumer products within the meaning of CPSA Section 3(a)(1). Accordingly, I vote to deny the petition.



U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, DC 20207

STATEMENT OF THE HONORABLE THOMAS H. MOORE DENYING THE
PETITION TO DEVELOP A MANDATORY STANDARD FOR ESCALATORS

Tuesday, October 2, 2000

I am voting today to deny the escalator petition. I want to commend both our staff and the escalator industry for their innovative work in finding a voluntary solution to the problem of entrapments in escalators.

I know the petitioners would have preferred that the Commission begin development of a mandatory federal standard. There are times, however, when working cooperatively with industry on a voluntary standard is more efficient and yields a more practical solution to a technical problem than could be achieved with a mandatory standard. Escalator entrapment is an area where, without the active support and technical expertise of the industry, Commission staff could have had a difficult time coming up with a quick, workable solution. And even if they did eventually devise one (after the numerous steps required by our rulemaking procedures), there would likely have been a fairly long postponement of the effective date to allow industry to begin manufacturing to the standard.

The Commission would only have been able to regulate escalators manufactured after a date in the future. Given the long life of escalators, it could have been fifteen or twenty years before a mandatory standard yielded much in the way of injury reduction. The broader scope of industry's new Code requirements and the relative speed with which it was devised and then adopted by the American Society of Mechanical Engineers is something mandatory regulation by CPSC could not have achieved. The accomplishment is one of which everyone, including the Andersons, should be proud.

As to the local jurisdictions' impetus to accept the new code requirements, they will be on notice that existing escalators can be made safer and that the **industry standard** states that they should be made so. Local jurisdictions do not, I think, take industry-enacted safety requirements lightly. It may take a while for all jurisdictions to make the proper changes but as each one does, all the escalators in their ambit will be made safer.

While the Commission might become concerned in the future if substantial numbers of new escalators were being made that did not meet the Code requirements (a situation which does not seem likely), the real issue will be maintaining existing escalators to the new Code requirements. This is an issue the local authorities will be much better able to handle with the

owners/operators of the escalators than the Commission would be. We simply do not have the manpower to continuously monitor the compliance of 30,000 escalators.

Most of the consumer product standards in this country are voluntary standards and most of those work extremely well including those that are never adopted by a local jurisdiction (because they are not part of a code administered by the jurisdiction). Much of the Commission's work involves working with voluntary standards-setting groups to change existing standards or to adopt new ones. The Commission's presence, of course, goes a long way to ensure that voluntary standards do work.

Commissioner Gall's points about the jurisdictional issue are very thought-provoking. My view is that where significant numbers of consumers are getting injured and no other entity seems to have the authority to take comprehensive action on the problem and where reasonable minds could differ as to the applicability of our statutes, then we should take steps to reduce the injuries. If a court subsequently disagrees with us as to jurisdiction, then we will stand corrected. But *not* to take a stand for fear we will ultimately be found wrong on the jurisdiction point would be to needlessly self-limit our authority over what might be legitimate consumer products.