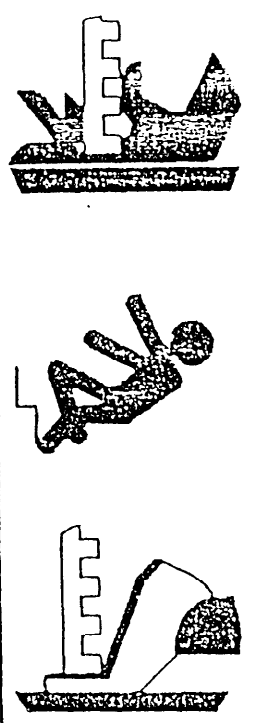
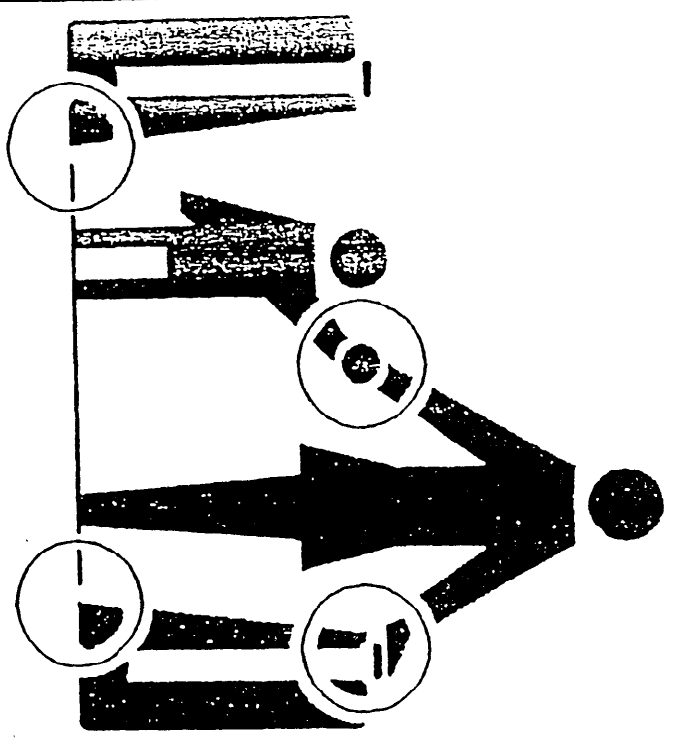


# ⚠ WARNING

Can Cause  
Personal Injury



Passengers  
Only



Hold Handrail  
Attend Children  
Avoid Sides

**SWERRIE, INC.**

244 San Felipe Way, Novato, CA 94945

D. A. Swerric, President

Tel or Fax: 415-897-2976

June 11, 1997

**A FAX—LETTER**

To: Fax No: 1-301-504-0127

Pages Sent **This plus 1 = 2**  
(Tel: 1-301-504-0800)

For:

Consumer Product Safety Commission  
Washington, DC 20207Subject: Petition CP 97-1  
Requesting Development of a Safety Standard for Escalators

Gentlemen:

With respect to the subject petition which I have read, I urge the CPSC to diligently pursue the matter of escalator safety. For too long individuals (mainly youth) have been getting caught in that small space between the side of the step and riser, and the adjacent skirt.

The manufacturers claim that space is necessary, yet when the side plates manufactured by Carl J. White & Associates of Colorado are installed which eliminate said space, the escalators run for years and years with no negative occurrences. And they do so without any entrapments in the subject space as it is all but eliminated.

The ASME A17 Committee has not revised the A17.1 Escalator Standard to make the deflector brushes manufactured by Kleeneze Sealtech Ltd. in Great Britain permissible. The brushes also prevent said entrapments.

Representatives of the A17 Committee continually appear at code committee meetings in various jurisdictions throughout the US and argue against the jurisdiction encouraging the use of either the brushes or the end plates. Most Jurisdictional Authority's do follow the advice of the representatives of the A17 Committee in the mistaken belief that they, the A17 representatives, are the experts, and if those aftermarket devices were viable the A17 Committee would surely have incorporated them into the code. Ha! Most jurisdictional authorities have not developed their code enforcement personnel and code making committee personnel to have sufficient expertise in escalators to feel competent in making the evaluation. It appears safer to go with A17.

Frankly it would be better for those A17 representatives to back off and just allow the jurisdictional authorities to permit or encourage the use of the devices if they feel they wish to. It often appears that many A17 Committee members have a second, or hidden, agenda about which nothing is said.

Such entrapment accident, have been occurring for years. It seems that a caring manufacturer would have been considering modifications or changes to the design of the steps and risers to minimize the chance of occurrence. They happen principally on down running escalators and at the rear of the tread run where the riser of the following step make a rather acute angle to the tread of the step ahead. If that angle where the riser, step tread

Consumer Product Safety Commission  
Petition CP 97-1. Safety Standard for Escalators  
June 11, 1997  
Page 2

and skirt meet were made obtuse, an entrapped object would tend to ride up and out of the entrapment. Maybe not the perfect solution, but at least an improvement. Of course there will be a multitude of reasons such cannot be done — according to the manufacturers.

Yes! I am in favor of the CPSC issuing a rule for corrective action and/or a change in design. Design would probably only effect new escalators. The two after market devices discussed above can easily be used on existing escalators to stop such entrapments.

Public notification of the hazard will probably do little to help. Cases in point: seat belts for automobiles; cigarettes. A law of enforcement is what is necessary.

Warning signs will probably do little to help. Case in point: Warnings on packs of cigarettes. In fact, manufacturers and producers seem to get more protection out of such signs than do the public.

Very truly yours,



D.A. Swerrie  
Safety Engineer & President

Div-97-0611C/SPC



June 17, 1997

Office of the Secretary  
Consumer Product Safety Commission  
Washington, DC 20207

Re: Petition Requesting Development of Safety Standard for Escalators

Dear Secretary Dunn:

The A17 Main Committee, the Committee for the American Society of Mechanical Engineers responsible for the writing, revising and interpreting the A17.1 Safety Code for Elevators and Escalators, has reviewed your request for comments related to referenced petition printed in the May 22, 1997 Edition of the Federal Register and, at its June 12, 1997, meeting voted to forward the comments shown below.

Please note that the comments shown below represent the views of the A17 Main Committee, rather than that of ASME.

- The A17 Main Committee, under the direction of the American Society of Mechanical Engineers, is a balanced consensus standards writing group responsible for developing escalator safety requirements. The CPSC has been invited and encouraged by the Committee to work with the A17 Committee. Representatives have appeared at the Main Committee meeting and have been encouraged to actively participate in the work of the A17 Escalator Subcommittee and the A17 Maintenance Subcommittee. If there is a concern, we, the Committee, feel it is proper to address that concern to the A17 Committee frame work which has the expertise to examine that concern and to formulate proper action.
- On May 14, 1996, at a meeting requested by the CPSC and again on June 27, 1996, at the ASME A17 Main Committee meeting, the CPSC challenged the industry to develop a step/skirt performance standard. At its own expense, National Elevator Industry, Inc. (NEII) accepted the challenge and retained Arthur D. Little, Inc., an independent engineering research firm, to assist the industry in developing a step/skirt performance testing standard. Once concluded, NEII will present the results first to the ASME A17 Escalator and Moving Walk Subcommittee, and then to the ASME A17 Safety Code for Elevators and Escalators Main Committee and recommend its adoption for new and existing escalators. CPSC should allow NEII the opportunity to complete its thorough study and the ASME A17 Committee the opportunity to adopt the results of the study before determining whether any further action is required.

June 17, 1997

Page 2

- Maintenance is a key part of escalator reliability and safety. Once installed, the Owner of the escalator is responsible for ongoing proper maintenance. Escalators are one of the safest modes of transportation when properly installed and maintained, in compliance with the ASME A17.1 Safety Code for Elevators and Escalators requirements and the original manufacturer's specifications.
- Escalator installation and maintenance is regulated by State and Local governments who enforce regulations relating to escalator safety (i.e. ASME A17.1 Safety Code for Elevators and Escalators). Although the CPSC's concerns for escalator safety is well intentioned, additional regulators and regulations are not warranted. However, strict and uniform enforcement of current State and local regulations by the appropriate authorities would improve safety.
- The A17 Committee feels the development of voluntary standards utilizing a consensus standard writing committee is in complete accordance with Public Law #104-113. Objectives should be achieved through voluntary standards as opposed to increased government regulations at the Federal level. The A17 Committee does not feel it is appropriate for the CPSC to begin a rule making proceeding to establish escalator standards when the process is already in place and functioning.
- It is the recommendation of the A17 Committee to urge the Commission to deny the petition and to work within the frame work of the Committee to see that any expressed concerns are properly addressed. History has shown that the A17 Committee is an active body and prides itself on its safety record. Millions of people safely use escalators daily. Anyone who is injured using an escalator is a concern and, we as a Committee and Industry, are constantly trying to address hazards when they occur. This Committee has the expertise and the frame work. Join us.

Sincerely,



Geraldine Burdeshaw  
Secretary, A17 Committee  
(212) 705-8523

cc: James W. Coaker, Vice President, Safety Codes and Standards  
Robert L. Seymour, Chair, A17 Committee  
Zack McCain, Vice Chair, A17 Committee  
Marcy A. Weinstock, Secretary, Board on Safety Codes and Standards

[Federal Register: May 22, 1997 (Volume 62, Number 99)]  
[Notices]  
[Page 28005]  
From the Federal Register Online via GPO Access [wais.access.gpo.gov]  
(DOCID:fr22my97-44)

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CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting Development of Safety Standard for Escalators

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

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SUMMARY: The Commission has received a petition from Scott and Diana Anderson for development of a safety standard for escalators. The petition alleges that escalators are associated with unreasonable risks of serious injuries resulting from entrapment of feet, toes, and other body parts in openings between the moving stairs and the sides of escalators. The Commission solicits written comments concerning the petition.

DATES: Comments on the petition and the report should be received in the Office of the Secretary by July 21, 1997.

ADDRESSES: Comments, preferably in five copies, should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504-0800, or delivered to the Office of the Secretary, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504-0800. Alternatively, comments may be filed by telefacsimile to (301) 504-0127 or by email to cpssc-os@cpssc.gov. Comments should be captioned "Petition CP 97-1 Requesting Development of a Safety Standard for Escalators." A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0800.

SUPPLEMENTARY INFORMATION: The Commission has docketed a submission from Scott and Diana Anderson requesting development of a safety standard for escalators as a petition for rulemaking under the Consumer Product Safety Act (15 U.S.C. 2051 et seq.).

The petition requests development of a standard containing requirements to prevent entrapment of feet, toes, and other body parts in openings between the moving stairs and the sides of escalators and requirements for signs to warn consumers of risks of injury associated with escalators. The Commission solicits written comments on this petition from all interested persons through July 21, 1997.

A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland. Interested persons may obtain a copy of the petition by calling or writing to Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0800.

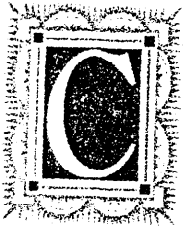
Dated: May 19, 1997.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97-13537 Filed 5-21-97; 8:45 am]

BILLING CODE 6355-01-P



CPSC/OFC OF THE SECRETARY  
WASHINGTON, D.C. 20207  
1987 JUL -1 A 11:05  
from the desk of Carol Minor

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

Dear Sir or Madam,

I am writing in response to the petition filed by Scott and Diana Anderson for the development of a safety standard for escalators.

It is my understanding that a side plate is available that eliminates gaps completely and <sup>are</sup> already being used on a voluntary basis - hundreds of malls, airports and museums.

It seems sensible that these should become a requirement in order to protect young children from injury. I urge the CPSC to set mandatory safety regulations in order to reduce accidents in the future.

kindest regards,

Carol L. Minor

Director

Westminster Weekday Schools

5001 E

A. U.

Houston TX 77057

(713) 782-7750

BUILDING OFFICIALS AND CODE  
ADMINISTRATORS INTERNATIONAL, Inc.

SOUTHERN BUILDING CODE  
CONGRESS INTERNATIONAL, Inc.

INTERNATIONAL CONFERENCE OF  
BUILDING OFFICIALS



# Council of American Building Officials

5203 LEESBURG PIKE • FALLS CHURCH, VA 22041  
(703) 931-4533 • FAX (703) 379-1546

**RICHARD P. KUCHNICKI**  
CHIEF EXECUTIVE OFFICER

June 30, 1997

Office of the Secretary  
Consumer Product Safety Commission  
Washington, DC 20207

*Re: Petition CP 97-1 Requesting Development of a Safety Standard for Escalators*

Dear Sir:

On behalf of the Council of American Building Officials (CABO), I am submitting comments in response to the CPSC Federal Register Notice of May 22, 1997 regarding a Petition Requesting Development of Safety Standards for Escalators.

We request the CPSC deny the petition to develop a safety standard for escalators because escalator installation and maintenance is regulated by state and local governments through the enforcement of regulations governing escalator safety such as ASME A17.1 Safety Code for Elevators and Escalators.

Rather than develop a new standard for escalators that would be difficult for CPSC to enforce, we encourage CPSC to work with ASME A17 Safety Code for Elevators and Escalators Committee in order to develop escalator safety requirements.

We are aware that the ASME A17 Committee is already in the process of developing a step/skirt performance standard for escalators which will be considered for adoption for new and existing escalators. CPSC should allow the industry the opportunity to adopt this new performance testing standard rather than developing a federal regulation.

Sincerely,

Richard P. Kuchnicki  
Chief Executive Officer

RPK/lvm





**ROBERT L. SEYMOUR & ASSOCIATES, INC.**  
Vertical Transportation Consultants

July 15, 1997

Office of the Secretary  
Consumer Product Safety Commission  
Washington, DC 20207

Re: Petition CP-97-1  
Petition Requesting Development of Safety Standard for Escalators

Dear Secretary Dunn:

I have had an opportunity to review your request for comments relating to the referenced petition printed in the May 22, 1997 Edition of the Federal Register, and, as an interested and knowledgeable party in the subject field, I feel I have a responsibility to respond.

As a Consultant in the vertical transportation field, I have had numerous opportunities to examine both new and existing escalator installations. I have seen equipment manufactured by almost all the manufacturers as well as equipment maintained by manufacturers and by big and small contractors plus equipment maintained by in-house personnel. I have seen equipment inspected by numerous people. The one consistent thing that I have found is total inconsistency. My investigations have shown that the inconsistency is due to many reasons. The lack of knowledge regarding manufacturer's maintenance and adjustment procedures, the lack of knowledge regarding Code requirements, ample time to perform the required maintenance and adjustment, ample time and personnel to perform required inspection, etc. are the major factors we have found that contribute to the inconsistencies.

In addition, I have had similar opportunities to examine some after market devices advertised to eliminate the step-skirt entrapment condition. I have examined the literature, seen them in actual operation and talked with Owners and service personnel that have these devices installed on their units. In the case of the Safety Side Plates, we find the sales information establishes them as the absolute answer and, in concept, this appears to be true. However, field research does not support this hypothesis. We have found a variety of user reaction from full support to those who have removed the devices because of operational problems. Our examinations have shown that these devices also require proper maintenance to insure useful operation. If proper maintenance is not provided, skirt panels can become marred increasing surface resistance and side panels can be damaged. It does seem that we find more and more unhappy users. The deflector brushes are relatively new. These are not advertised to eliminate entrapments, but to alert the rider of their close proximity to the skirt

**ROBERT L. SEYMOUR & ASSOCIATES, INC.**

Secretary Dunn  
July 15, 1997  
Page Two

panel resulting in the rider moving away from the step-skirt junction. European experience with this product seems to show this has a positive influence. However, the corner area at the step-riser junction is still exposed.

My experience involves participation in some litigation matters involving escalators. My investigations during these matters support my previous findings plus I find people do not know how to use escalators. A simple observation of people using any escalator will show strong support of this finding. The staggering number of people who use escalators daily make us apathetic to any concerns about safe use.

Over the past twenty plus years, I have been very involved in the ASME A17.1 Safety Code for Elevators & Escalators and other Code activities. One thing I have learned in that time is development of a useful and enforceable Code is not an easy task. Numerous people will criticize your work, but very few will take an active part to work in the effort. It seems very easy to those on the outside to formulate changes, but they don't realize the amount of investigation and work that goes into review of a proposed change and the formulation of proper wording to assure proper information is transmitted. The issue about step skirt entrapments has been an ongoing Code investigation. As you are aware, an extensive study is now in the works about this very issue. In addition, an invitation has been extended to representatives of the CPSC to join the A17 Committee work. We are always soliciting new members who can add to our working knowledge which will produce a better Code.

As an instructor of elevator and escalator related courses, I have had an opportunity to talk with numerous people from all areas of the country and from all phases of the elevator-escalator spectrum. During these training sessions, we have numerous occasions to discuss various subjects. Escalator step-skirt issues are one of those topics that is discussed. Everyone in this industry is aware of escalator accidents even before recent notoriety stemming from various TV and newspaper items. These discussions often cover the various after market escalator items that are available. My observations have found some people support their use, but we also find many who have tested the devices and were not satisfied with their performance. There are several big users that have informed me that their organization actually tested and removed the safety side plates. They have given a variety of reasons for their action. Everyone does agree that even though you have side plates, maintenance is still an absolute requirement.

From my vantage point as someone very interested and knowledgeable in this matter, I feel this item as well as all safety related elevator and escalator matters must be addressed; however, I feel the proper frame work is already in place and this frame work includes means for enforcement. I feel we must all take an active part in this frame work to make the

**ROBERT L. SEYMOUR & ASSOCIATES, INC.**

Secretary Dunn

July 15, 1997

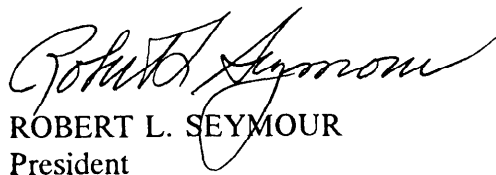
Page Three

improvements necessary. I feel that recent developments within the A17 and industry frame work shows our intense effort to make all equipment safer. I suggest CPSC become an active part of that operation and share your information and input into formulation of improvements. I feel that the education program undertaken by the Elevator and Escalator Safety Foundation is helping to educate riders. This program needs to be expanded to touch everyone. Industry organizations must be prompted to improve training of people responsible for maintenance and inspection. People responsible for the contracting of maintenance must instruct the equipment Owners of the need for the maintenance. We need to improve what we have.

I strongly urge the CPSC to investigate this matter completely before making any decisions. My experience has shown that all is not as first observed. I feel that once you have completed your indepth review you will come to the decision to deny the petition and to take a more active part in the existing frame work. I feel that your input can be a valued addition to our work. If I can be of assistance during your review of this matter or provide details of the items stated, I would be pleased to be of service. As a concerned knowledgeable person with no outside interest in the outcome of your decision, I feel I could help. Feel free to call on me at any time.

Sincerely,

ROBERT L. SEYMOUR & ASSOCIATES, INC.

  
ROBERT L. SEYMOUR  
President

RLS/dhs



# McCain Engineering Associates, Inc.

FAX (405) 321-8309

2207 Creighton Drive  
Norman, OK 73071-7342  
(405) 447-4909

July 15, 1997

Office of the Secretary  
Consumer Product Safety Commission  
Washington, DC 20207

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

Dear Secretary Dunn:

I have reviewed the subject petition with interest and certainly have empathy for anyone injured especially children. I have spent a large portion of my career working to prevent such incidents. I retired from Federal Service (Corps of Engineers, General Services Administration and Postal Service) in 1990. While with the Postal Service, I developed an elevator inspection program, maintenance standards and contract documents specifically to prevent injury by elevators and escalators. I also served on the ASME A17.1 "Safety Code for Elevator and Escalators" Main Committee, Inspectors Manual Committee, as well as the ASME QEI-1 Committee on Qualification of Elevator Inspectors. After retirement from Federal Service, I formed a consulting firm and continue to serve on these Code committees at my own expense actually increasing my participation by serving as Chairman of the new A17 working Committee on Maintenance, Repair and Replacement. I say this to show that I am sincere and proactive in working to prevent elevator and escalator injuries.

I have investigated the after market device that is mentioned in the subject petition and do not agree that it is the answer to the problem. Consequently I do not recommend them. I do recommend that the escalators step to skirt clearance be maintained as specified in the Code and that the step skirts be made of or treated with friction reducing material. The so called

"Safety Side Plates" has draw backs. For example the last time I rode the Atlanta subway escalators, (December 1996) I noticed several plates broken or missing. The plates also rub off the friction reducing material from the skirts and sometime wear out the skirts, creating a side entrapment point.

I teach classes on elevator and escalator inspection for the American Society of Mechanical Engineers and have had the opportunity to obtain input on the add on side plates from transit authority representatives. In at least two instances (BART and CTA) I was advised that the side plates were purchased for many units but only installed on a few.

Therefore I feel that you would be well advised to thoroughly investigate the use of the device with all users rather than acting on the advice of the person selling them.

The ASME A17.1 "Safety Code for Elevators and Escalators" is being continually changed to make the equipment safer. In recent years numerous safety devices have been added to the escalator requirements. These include:

- Stopped handrail device 1988
- Handrail speed monitoring device 1992
- Step level Device 1990
- Missing step device 1989
- Skirt obstruction devices 1978
- Step upthrust device 1980
- Handrail entry device 1992
- Brake torque requirement to limit deceleration 1988
- Combplate impact device 1992
- Deck Barricades 1986
- Stop Button Relocation 1983
- Outdoor protection 1988

In addition numerous other Code changes concerning configuration, dimensions, operation and wiring to improve safety have been made. Many of these safety improvements employ state-of-art technology in sensors, materials and electronics.

Also I am sure that you know that the National Elevator Industry Incorporated is funding a study to quantify the friction coefficient of the step skirt to reduce side entrapments.

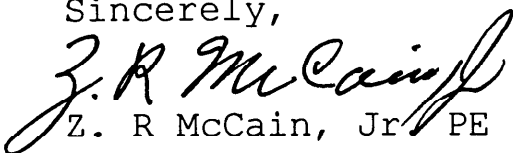
Concerning the petition item to notify the public of the hazards of escalators, there is already an organization with the mission of educating the public on safe use of elevators and escalators. The "Elevator Escalator Safety Foundation" is a privately supported organization established to educate the public in the safe use of elevator and escalators. The initial emphasis was on training programs for children. A video for adults has just been released. It would be a more appropriated use of government funds to participate in and support this organization rather than create a duplicate government organization.

Concerning the need for a better sign, the present sign was designed as a pictography so that persons could read it in the short time they have while approaching the escalator. The Code in fact prohibits additional sign which would distract from the important cautions on the required pictography. If this sign were heeded injuries on escalators would be greatly reduced.

Over the years I have had the privilege to work with many representatives of Federal Government agencies on the ASME A17 Code as well as those representing State and City enforcing authorities. These all have an input to the consensus making process under ASME and ANSI procedures.

Therefore I urge you not to issue rules on this complex subject but to respond to the petition by working through the existing process of standards development. Indeed it would be an unwise use of government funds to duplicate a process that is already in existence.

Sincerely,

  
Z. R. McCain, Jr. PE

BUILDING OWNERS AND MANAGERS ASSOCIATION INTERNATIONAL

BOMA FAX

To: SADGE PUNIN Dept. Code: \_\_\_\_\_  
 Company: C.P.S.C Date: 7/18/97  
 Fax # 301 504-0127 # of Pages: 8  
 BOMA Contact: GERRY LEDERER  
 Direct Dial Telephone #: (202) 326-6302 Extension: \_\_\_\_\_

1201 New York Ave., NW  
 Suite 300  
 Washington, DC 20005  
 202-408-2662  
 FAX 202-371-0181  
<http://www.boma.org>



NEW FROM BOMA



BOMA is setting the new industry standard with the completely revised and updated **Standard Method For Measuring Floor Area in Office Buildings**.  
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Learn how to shop for power in the deregulated electricity marketplace with **Power Shopping**. Includes a provider evaluation scorecard, model lease language, and the do's and don'ts of retail wheeling.  
 Order #135-PWRSH-500 BOMA Members \$30.00 List Price: \$50.00



Solve your cleaning headaches with **Cleaning Makes Cents**. Includes guidance on designing a cleaning program and preparing a Request for Proposal (RFP), checklists on a service contractor selection process and sample bidder's qualification form.  
 Order #136-CLNSTD-522 BOMA Members \$75.00 List Price: \$125.00

CONSUMER PRODUCT SAFETY COMMISSION  
Comments of BOMA International

**CONSUMER PRODUCT SAFETY COMMISSION**

<b>PETITION CP 97-1:</b>	)	
<b>Requesting Development of a Safety</b>	)	<b>Comments of Building</b>
<b>Standard for Escalators</b>	)	<b>Owners and Managers</b>
	)	<b>Association International</b>
	)	
	)	

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**SUMMARY**

The over 16,000 members of BOMA International, who own or manage more than half of the office space in North America, and who collectively own or control more escalators than any other party anticipated to file comments in this proceeding, applaud the Consumer Product Safety Commission's desire to enhance escalator safety by addressing the issue of entrapment. BOMA, however, for legal and public policy reasons, calls upon the Commission to reject petitioner's request for a standard.

From a legal perspective, the Commission lacks jurisdiction to promulgate and enforce a safety standard for escalators. Escalators are either an industrial product or a real estate fixture but certainly not a consumer product.

From a public policy perspective, because Federal Courts would ultimately rule the Commission exceeded its authority in its attempt to create its own safety standard for escalators, its actions would result only in confusion in the marketplace, the delaying of ongoing efforts by the proper parties to address entrapment, and the siphoning off of valuable time and staff resources from the Commission's vitally important core mission of protecting consumers from unsafe "consumer products."

Finally, because BOMA shares the Commission's desire to avoid entrapment accidents such as that which occurred in Houston, we invite the Commission to join with BOMA, the National Elevator and Escalator Institute, the American Society of Mechanical Engineers, and numerous other individuals in our efforts before governmental and private sector bodies which have the proper jurisdiction to not only address but enforce escalator safety standards.



CONSUMER PRODUCT SAFETY COMMISSION  
Comments of BOMA International

**CONSUMER PRODUCT SAFETY COMMISSION**

<b>PETITION CP 97-1:</b>	)	
<b>Requesting Development of a Safety</b>	)	<b>Comments of Building</b>
<b>Standard for Escalators</b>	)	<b>Owners and Mangers</b>
	)	<b>Association International</b>
	)	
	)	

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**I. INTRODUCTION**

BOMA International is a federation of 95 local associations whose 16,000 members own or manage over 6 billion square feet of office space--more than half the office space in North America. The membership, composed of building owners, managers, developers, leasing professionals, facility managers, asset managers, and providers of goods and services including elevators and escalators, collectively represents all facets of the commercial real estate industry. In addition to office buildings, our membership also extends to owners and managers of shopping centers, suburban office parks, warehouses, universities, and hospitals.

While we cannot document for the Commission the exact number of escalators that are owned or under the control of the BOMA membership, it would be safe to say that the BOMA membership owns or has management responsibility for over half of this country's escalators. No other group filing comments in this proceeding is more potentially liable for damages resulting from escalator accidents than those represented in these comments.

**II. THE LANGUAGE OF 15 U.S.C. 2051 et. seq. IS CLEAR ON ITS FACE: THE CPSC MUST LIMIT ITS ACTIVITIES TO CONSUMER PRODUCTS. IT THEREFORE LACKS JURISDICTION OVER ESCALATORS.**

Congress has not granted the Consumer Product Safety Commission the power to regulate escalators, as escalators are not a "consumer product."

CONSUMER PRODUCT SAFETY COMMISSION  
Comments of BOMA International

15 U.S.C. 2051 et seq. is crystal clear in its mandate to the Consumer Product Safety Commission (Commission). As outlined in 15 U.S.C. 2051 (b), the Commission is to address its attention to "consumer products."

- "(b) The purposes of (creating the CPSC)... are--
- (1) to protect the public against unreasonable risks of injury associated with **consumer products**;
  - (2) to assist consumers in evaluating the comparative safety of **consumer products**;
  - (3) to develop uniform safety standards for **consumer products** and to minimize conflicting State and local regulations; and
  - (4) to promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries."

15 U.S.C. 2051 (b) **emphasis added.**

So as to leave no confusion regarding what constitutes a "consumer product," Congress defined the term exhaustively for the Commission in 15 U.S.C. 2052:

- "(a) For purposes of this chapter:
- (1) 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,
    - (B) tobacco and tobacco products,
    - (C) motor vehicles or motor vehicle equipment (as defined by section 30102(a)(6) and (7) of title 49),
    - (D) pesticides (as defined by the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.]),
    - (E) any article which, if sold by the manufacturer, producer, or importer, would be subject to the tax imposed by section 4181 of the Internal Revenue Code of 1986 [26 U.S.C. 4181] (determined without regard to any exemptions from such tax provided by section 4182 or 4221, or any other provision of such Code), or any component of any such article,
    - (F) aircraft, aircraft engines, propellers, or appliances (as defined in section 40102(a) of title 49),
    - (G) boats which could be subjected to safety regulation

CONSUMER PRODUCT SAFETY COMMISSION  
Comments of BOMA International

under chapter 43 of title 46; vessels, and appurtenances to vessels (other than such boats), which could be subjected to safety regulation under title 52 of the Revised Statutes or other marine safety statutes administered by the department in which the Coast Guard is operating; and equipment (including associated equipment, as defined in section 2101(1) of title 46) to the extent that a risk of injury associated with the use of such equipment on boats or vessels could be eliminated or reduced by actions taken under any statute referred to in this subparagraph,

(H) drugs, devices, or cosmetics (as such terms are defined in sections 201(g), (h), and (i) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 321(g), (h), and (i)]), or

(I) food. The term "food", as used in this subparagraph means all "food", as defined in section 201(f) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 321(f)], including poultry and poultry products (as defined in sections 4(e) and (f) of the Poultry Products Inspection Act [21 U.S.C. 453(e) and (f)]), meat, meat food products (as defined in section 1(j) of the Federal Meat Inspection Act [21 U.S.C. 601(j)]), and eggs and egg products (as defined in section 4 of the Egg Products Inspection Act [21 U.S.C. 1033]).

Such term includes any mechanical device which carries or conveys passengers along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passengers amusement, which is customarily controlled or directed by an individual who is employed for that purpose and who is not a consumer with respect to such device, and which is not permanently fixed to a site. Such term does not include such a device which is permanently fixed to a site. Except for the regulation under this chapter or the Federal Hazardous Substances Act [15 U.S.C. 1261 et seq.] of fireworks devices or any substance intended for use as a component of any such device, the Commission shall have no authority under the functions transferred pursuant to section 2079 of this title to regulate any product or article described in subparagraph (E) of this paragraph or described, without regard to quantity, in section 845(a)(5) of title 18. See sections 2079(d) and 2080 of this title, for other limitations on Commission's authority to regulate certain consumer products."

It is clear from the language of the Act that Congress did not intend the Commission to have authority over escalators. Escalators are not a "consumer product" as they are not sold in general commerce to the public, are not employed for personal enjoyment or use, and are not generally

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used in a home --all essential characteristics of a consumer product as defined by the Congress. Escalators would clearly fall in the exemption on 15 U.S.C. 2052 (a) (1) (A) of articles "not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer."

Further more, they lack any of the characteristics of a consumer product that we typically associate with such a product. They are not purchased by a traditional consumer, they are not portable, they are not affordable by the typical consumer, and because of their "fixture" status are more akin to real estate than personal property.

It is clear that escalators are not "consumer products."

III. ESCALATORS ARE NOT AMUSEMENT RIDES AND THEREFORE  
NOT SUBJECT TO THE JURISDICTION OF THE CPSC.

There will be some who ask the Commission to attempt to shoehorn an escalator into the amusement/carnival mechanism language added to the end of the definition section of 2052. Such an effort would run counter to a bedrock rule of statutory construction. In Chevron, U.S.A. v. National Resources Defense Council, Inc., 467 U.S. 837, 104 S. Ct 277, 81 L. Ed. 2d 694, 717 (1984), the Court counseled that there is no need to attempt to devine the legislative intent from legislative history when the clear meaning of the Congress is there for all to read. "There is no safer nor better settled canon of interpretation than that when language is clear and unambiguous it must be held to mean what it plainly expresses." Because no other agency had the ability to regulate carnival/amusement machines, the Commission was granted by Congress the ability to regulate such mechanisms. The Congress did not extend this definition to escalators.

The language of Section 2052 is clear on its face that an escalator is not a consumer product.

IV. IN SEEKING TO PROMULGATE A SAFETY STANDARD, THE  
COMMISSION'S ACTS WILL RUN COUNTER TO ITS MISSION  
OF ENSURING CONSUMER SAFETY BY DELAYING DEVELOPMENT  
AND IMPLEMENTATION OF ENFORCEABLE SAFETY STANDARDS AND  
CAUSE CONFUSION IN THE MARKETPLACE.

BOMA appreciates that the Commission's intentions to regulate escalator safety are grounded in the human desire to respond to what is a heart-wrenching petition by the Anderson family. However, because Federal Courts would ultimately rule the Commission lacked jurisdiction to enforce any rules it might develop, the Commission would fail to meet its mandate as established

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by the Congress to protect the public "against unreasonable risks of injury associated with consumer products." (15 U.S.C. 2051)

Should the Commission choose to disregard its congressional mandated mission, it will take away valuable resources needed to address "consumer product" threats which only it is empowered to address. Further, the Commission's actions could result in confusion in the marketplace as to who regulates such devices--with the result being a delay in enhancing escalator safety.

While protection of the public from "industrial" products is not within the domain of the Commission, it is within the domain of others. The fact that others have authority over these products would also have been a compelling reason as to why Congress implicitly exempted escalators from its list of products not considered a "consumer product" in Section 2052.

If one examines the other types of "products" which might otherwise be considered "consumer" in nature, but which Congress specifically excluded from the definition of "consumer products" such as boats, drugs and tobacco, it is clear that Congress was influenced by the fact that another agency at either the state, local or federal level of government was addressing the issue. As outlined below, there are numerous private and public agencies which are charged with overseeing the safe manufacture, installation and operation of escalators.

V. OVERSIGHT OF ESCALATORS BY GOVERNMENT, PRIVATE INDUSTRY AND THREAT OF LITIGATION HAS RESULTED IN THE MANUFACTURE, INSTALLATION AND OPERATION OF A VERY SAFE PRODUCT.

BOMA shares both the Commission's concerns about escalators and its goal that there be zero injuries resulting from their operations. Still, the record would not accurately reflect the state of the industry were it not to recognize that escalators are one of the safest modes of transportation. Their installation, operation and maintenance have become even safer as there exists a clear road map for operators to follow. This road map is the result of an ongoing public private partnership on establishing standards at the American Society of Mechanical Engineers in the ASME A17.1 *Safety Code for Elevators and Escalators*.

Escalator installation and maintenance is regulated by state and local governments which enforce regulations governing escalator safety. The Commission need only reference any one of the three model codes to find these regulations. These model codes are adopted and enforced by the individual state and local code agencies (e.g. chapter 30 of the *Uniform Building Code* promulgated by the International Conference of Building Code Officials).

The American Society of Mechanical Engineers *Safety Code for Elevators and Escalators* (ASME A17) Committee is a balanced consensus standards writing group responsible for developing escalator safety requirements. The ASME A17 Safety Codes are evolving standards; a revised version of ASME A17.1 *Safety Code for Elevators and Escalators* is published every

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three years, with two annual supplements published in the intervening years. It is in fact the work of the ASME A 17 group that has been adopted in the model building model codes.

BOMA understands ASME is filing comments with the Commission in which they also ask the commission to reject petitioner's request and, instead become a participant in their (ASME's) process. BOMA International would strongly support that recommendation.

## VI. INDUSTRY RESPONSE

Finally, the Commission should feel very proud of the effective manner in which it has exercised leadership on this issue. On two separate occasions -- May 14, 1996 at a meeting requested by the CPSC and again on June 27, 1996 at the ASME A17 Main Committee meeting --the CPSC challenged the industry to develop a step/skirt performance standard.

The industry has responded to the CPSC challenge. Specifically, the National Elevator Industry Inc. (NEII), at its own considerable expense, has retained Arthur D. Little--a respected, independent engineering research firm--to develop a step/skirt performance testing standard.

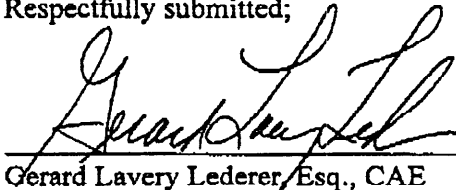
As an interested party in that research, BOMA International will bring all its market power to bear to ensure the NEII fulfills its pledge to present the results to the ASME A17 Safety Code for Elevator and Escalators Committee.

All of these efforts, however, could be jeopardized should the Commission choose to move forward with its own attempt to establish a standard, which BOMA Internationally truly believes will be rendered unenforceable by the Commission.

## VII. CONCLUSION

BOMA shares the Commission's desire to avoid entrapment accidents such as that which occurred in Houston. We invite the Commission to join with BOMA, the National Elevator Industry Inc., the American Society of Mechanical Engineers, and numerous other individuals in our efforts before governmental and private sector bodies which have the proper jurisdiction to not only address but enforce escalator safety standards. We also encourage the Commission to do all in its power to assist the industry educate the public, especially parents, on their role in avoiding entrapments.

Respectfully submitted;



Gerard Lavery Lederer, Esq., CAE  
Vice President  
Government and Industry Affairs  
BOMA International

Author: /G=GERRY/S=LEDERER/DT=ID/DV=internet!boma.org!glederer/O=ATTMAIL/ADMD=ATTMAIL/C=U  
S at CPSC-x400  
Date: 7/18/97 4:31 PM  
Priority: Normal  
TO: Todd A. Stevenson at CPSC-HQ1  
Subject: Petition 92-573

----- Message Contents -----

Dear Ms. Dunn:

Attached for filing in the above captioned docket are the comments of the Building Owners and Mangers Association, International.

Our address is 1201 New York Avenue, N.W.  
Washington DC 20005  
(202) 326-6350

We shall also forward by fax a signed copy of these comments.

Thank you

*waiting  
for  
escalation  
comments*

Autor: /S=Askew(m) Todd/DT=ID/DV=internet!aap.org!TAskew/O=ATTMAIL/ADMD=ATTMAIL/C=US at CPSC-x400

Date: 7/18/97 12:43 PM

Priority: Normal

TO: Todd A. Stevenson at CPSC-HQ1

Subject: Petition CP 97-1 Requesting Development of a Safety . . . .

----- Message Contents -----

\*\*\*\* HARD COPY WILL FOLLOW \*\*\*\*

July 18, 1997

Ann Brown, Chairman  
Consumer Products Safety Commission  
Room 502  
4330 East-West Highway  
Bethesda, MD 02814

RE: Petition CP 97-1 Requesting Development of a Safety Standard  
for Escalators

Dear Chairman Brown:

I am writing on behalf of the 53,000 physician members of the American Academy of Pediatrics to express our support of the petition of Scott and Diana Anderson requesting the development of a safety standard for escalators.

According to figures provided by the National Electronic Injury Surveillance System, for the period 1990-1994, at least 1,000 persons annually were injured when a shoe or body part became caught in the escalator on which they were riding. More notable is that an estimated 80% of these victims were children under the age of fifteen, and half of all victims were under the age of six.

In order to address this threat to the safety of our children, the American Academy of Pediatrics supports the following:

? The development of new escalator manufacturing requirements that will close the gap between the sidewall and the moving stair so as to prevent entrapment;

? Requiring that, to the greatest extent possible, escalators be retrofitted with currently available safety devices for the purpose of preventing entrapment; and

? New, more visible signs be required to warn young riders and parents of the danger of entrapment.

The American Academy of Pediatrics requests that Consumer Products Safety Commission grant this petition for the development of a safety standard for escalators and issue a notice of proposed rule making for this purpose as soon as is feasible. The Academy looks forward to commenting on these new safety requirements and working with the Commission to educate parents and children about the potential dangers of escalators.

Sincerely,



/S/

Robert E. Hannemann, MD  
President



# NAESA INTERNATIONAL

National Association of Elevator Safety Authorities International

Executive Offices  
4541 N. 12th Street  
Tel 602/266-9701

Floyd Rommel, Executive Director  
Phoenix, AZ 85014-4203  
USA  
Fax 602/265-0093

"In the Public Interest"

July 15, 1997

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

### Petition CP 97-1 Requesting Development of a Safety Standard for Escalators

Dear Ms. Dunn:

The National Association of Elevator Safety Authorities International is a nonprofit organization with a motto of - **"In the Public Interest."** Our organization is a membership organization made up of members of the vertical transportation industry and others who support our goal. We are an ASME QEI accredited organization that certifies elevator safety code inspectors.

As an elevator safety code organization, we participate in the American Society of Mechanical Engineers Safety Code for Elevators and Escalators (ASME A17) Committee that is a balanced consensus standards writing group responsible for developing escalator safety requirements. The ASME A17 Safety Codes are evolving standards; revised version of the ASME A17.1 Safety Code for Elevators and Escalators is published every 3 years with two annual supplements published in the intervening years.

Escalator installation and maintenance is regulated by State and Local governments who enforce regulations governing escalator safety (i.e., ASME A17.1 Safety Code for Elevators and Escalators). Maintenance is a key part of escalator reliability and safety. Once installed, the owner of the escalator is responsible for ongoing proper maintenance. Escalators are one of the safest modes of transportation when properly installed and maintained, in compliance with the ASME A17.1 Safety Code for Elevators and Escalators requirements and the original manufacture's specifications. Although the CPSC's concerns for