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UNITED STATES GOVERNMENT

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

# Memorandum

TO : Charles H. Boehne, OFC  
THRU : Frederick Barrett, EX  
THRU : Michael A. Brown, OGC *WJB*  
FROM : Susan Ness, OGC *SN*

DATE: NOV 13 1974

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SUBJECT: Jurisdiction over Amusement Rides

This is in response to your memorandum of September 24 in which you asked whether the Commission has jurisdiction over amusement rides. Your memorandum was prompted by a letter from Robert W. McAfee, Acting Area Director of the Denver Office.

In our opinion, amusement rides fall within the jurisdiction of the Commission, and are subject to regulation under the Consumer Product Safety Act.

Section 3(a)(1) of the Consumer Product Safety Act (CPSA) 15 U.S.C. 2052(a)(1), defines consumer product as follows:

...any article or component part thereof, produced or distributed... (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... (emphasis added).

It can be said that consumers "use" amusement rides when they ride on them (payment for the ride is immaterial). Since that use is considered "recreation", amusement rides fall within the above statutory definition.

The legislative history of the Act supports this conclusion.

**ADVISORY OPINION**

"It is not necessary that a product be actually sold to a consumer, but only that it be produced or distributed for his use.... Also products which are primarily or exclusively sold to industrial or institutional buyers would be included within the definition of consumer product as long as they were produced or distributed for use of consumers."  
[H.R. Rep. No. 1153, 92d Cong. 2d Sess. 27 (1972)]

Certain types of products, however, have been excluded from the broad definition of consumer product. Section 3(a)(1)(C) of the CPSA, 15 U.S.C. 2052(a)(1)(C), excludes "motor vehicles" and "motor vehicle equipment," as defined by sections 102(3) and 102(4) of the National Traffic and Motor Vehicle Safety Act of 1966, (NTMVSA) 15 U.S.C. 1391. In our opinion, amusement rides do not fall within the definition of motor vehicle or motor vehicle equipment, since the rides are not manufactured primarily for use on the public streets, roads and highways.

What is less clear is whether amusement rides are to be regulated under the Federal Hazardous Substances Act, (FHSA) or under the CPSA. Section 30 of the CPSA, 15 U.S.C. 2079, provides that if the risk of injury associated with a product could be eliminated or sufficiently reduced by action under FHSA, then the Commission must regulate only in accordance with the provisions of that act.

Section 2(f)(1)(D) of FHSA, 15 U.S.C. 1262, added by amendment in 1969, defines hazardous substances as including "...any toy or other article intended for use by children which...presents an electrical, mechanical or thermal hazard." There is no comparable provision in FHSA for "adult products" which present similar hazards. The House Report on the 1969 amendment, [H. R. Rep. No. 398, 91st Cong., 1st Sess. 9 (1969)] listed swings, seesaws, and other playground equipment as examples of products subject to the expanded FHSA jurisdiction. It is clear that playground equipment was designed for and is used primarily by younger children. Similarly, "kiddie rides" are limited to younger children and would be regulated by the FHSA. Amusement rides, however, which include the roller coaster and ferris wheel, are patronized by adults as well as children. In fact, the NEISS data for the month of July 1974 show that over half of the reported injuries from amusement rides involved persons 15 and over. Unless a

regulation is limited to kiddie rides, it is arguable that FHSA is inadequate to effectively regulate all amusement rides. Therefore, regulatory proceedings should be conducted pursuant to the provisions of the CPSA.

In your memorandum, you question whether the theory of assumption of the risk bars the Commission from jurisdiction over amusement rides. Assumption of the risk is a legal theory used by defendants in product liability cases between private parties. In no way does it affect our jurisdiction over defective consumer products.

We are forwarding a copy of your memorandum and the accompanying letter from the Denver Area Office to the Section 15B for further action.