66/64 clear
per TBS 3/22/82

ADVISORY OPINION
#284

20

U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

DEC 1

OFFICE OF THE
GENERAL COUNSEL

Mr. James F. Rill
Collier, Shannon, Rill & Scott
1055 Thomas Jefferson Street, N. W.
Washington, D. C. 20007

Dear Mr. Rill:

This letter responds to your letters of October 14, 1981 and November 9, 1981, in which you request a determination of whether Toro models 23022, 23158, and 23267 are consumer products and thus subject to the Safety Standard For Walk-Behind Power Lawn Mowers, 16 CRF Part 1205. Our analysis of the data you have submitted indicates that these are not consumer products because consumers do not appear to "customarily" use them.

As you know, the term "consumer product" is defined in 15 U.S.C.§ 2052(a)(1), and the term does not include "any article which is not customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer." The legislative history of this section indicates that products that are not used more than occasionally by consumers are not consumer products. H.R. Rep. No. 921153, 92d. Cong., 2d Sess. 27 (1972).

In general, we have established no specific criteria to determine whether consumers use a product more than occasionally. Instead, we review all available information relevant to a particular determination. In this case, the models are relatively low volume production items and only about 5 percent of the mowers are sold to consumers. In addition, the products are not advertised or distributed for sale in consumer-oriented channels. Also, the mowers' weight and cost are more than those of the usual consumer mowers. Therefore, based on all of these factors, we reached our conclusion that the mowers in question are not consumer products. In making this determination, the results of the warranty card survey that you submitted were very significant. We note, however, that some of the business purchasers may have been rental firms that could conceivably rent some of the mowers for consumer use. Should we receive information in the future that indicates a significantly larger consumer usage, we could reconsider the jurisdictional question.

The first paragraph on page two of your October 14, 1981 letter states your belief that the exclusionary criterion in § 1205.1(c) of the standard is illustrative only and does not operate to define with exclusivity those mowers which are commercial rather than consumer products. It is our view, however, that this section merely excludes from coverage of the standard certain large, heavy, and powerful mowers even though they are consumer products (see 44 Fed. Reg. 9998).

Sincerely,

Margaret A. Freeston

Margaret A. Freeston
Acting General Counsel

UNITED STATES GOVERNMENT

Memorandum

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

TO Carl W. Blechschmidt, EX-P
Through: Walter R. Hobby, Acting AED, Economics

DATE November 30, 1981

FROM William W. Zamula, ECCP

SUBJECT: Request by Toro for a Determination that Certain "Commercial" Mowers are not Consumer Products and not subject to the Mower Standard

You asked us to respond to OGC's request of October 30, 1981, for information on the use and distribution of "commercial" mowers.

We have no reason to dispute Toro's contention that 95% of their commercial models are used by employees in the scope of their employment. We note that Toro makes no claim that there is separate distribution for their commercial models, but rather that their commercial accounts tend to order directly from their distributors, bypassing the retailer. A retail outlet could undoubtedly order this commercial equipment just as a commercial user can purchase consumer-oriented lawn mowers.

In contacts with four equipment rental firms in the Washington, D.C. area, we found no particular pattern of equipment ownership. One firm rented consumer mowers (19 inch cutting width), one firm rented mowers which may have been either consumer or commercial mowers (as well as a sickle-bar mower), one firm rented two commercial mowers comparable to the Toro commercial mowers, and one firm rented a few consumer mowers as well as a large commercial mower capable of pulling a riding sulky. When inquiring about the availability of mowers, we asked for a heavy-duty model and described a mowing job involving 1/2-3/4 acres of tall, dense grass, in order to elicit information about the product.

We conclude that "commercial" mowers, even mowers not subject to the standard such as sickle-bar mowers and large mowers, are available to consumers through rental outlets. The extent to which the Toro commercial mowers are sold to consumers is addressed by Toro's analysis of warranty cards. At Chairman Steort's meeting with mower manufacturers on September 28, 1981, several manufacturers cautioned against reliance on warranty cards to substantiate claims about mower owners. They argued that the return rates for warranty cards are very low, 5% or less, and may not be returned by the full spectrum of owners. However, this is not the situation for Toro, where a relatively high percentage of the warranty cards for their commercial mowers were returned.

In our opinion, Toro's targeting of advertising to commercial end-users is their most convincing argument. As long as advertising of commercial products in publications and brochures is distinct from promotion of consumer products, the relatively low volume of shipments of these products lends credence to Toro's claim that leakages of these products into consumer ownership will be slight.

RESTRICTED

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Cynthia A. Nebergall*
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Jeffrey W. King
Lenore S. Ostrowsky
Carol T. Crawford
Julie M. Saulnier
Thomas J. Hamilton
Alan M. Dunn
Robert L. Meuser
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Scott E. Sterling

* Not Admitted in D. C.

Walter Flowers
William F. Fox, Jr.
Of Counsel

November 9, 1981

Mr. Stephen Lemberg
Assistant General Counsel
U.S. Consumer Product Safety
Commission
Washington, D.C. 20207

Dear Mr. Lemberg:

We have received your letter of October 14, 1981 seeking additional information pursuant to our request for an advisory opinion on behalf of the Toro Company. We are happy to provide the information you seek.

The production figures you have requested for each of the three commercial mowers for the past two years are as follows:

Model Number	Domestic Shipment of Toro Units F 1980	F 1981
23022 5-HP Hand-Powered	[redacted]	
23158 5-HP Self-Propelled		
23267 6-HP Self-Propelled		

[redacted] and requests that this information be kept in a restricted file, as per your suggestion. It is our understanding that, should there be a request for disclosure of the above information, Toro will be given an opportunity to document its claim of confidentiality before any determination is made regarding its release.

RESTRICTED

RESTRICTED

[redacted]

We believe that the above information is fully responsive to your request. We remain ready to provide any further information or assistance that might expedite the resolution of this matter.

Sincerely,

JAMES F. RILL
Attorney for the Toro Company

JFR:jlk

HC

U.S. CONSUMER PRODUCT SAFETY COMMISSION

WASHINGTON, D.C. 20207

October 30, 1981

OFFICE OF THE
GENERAL COUNSEL

Mr. James F. Rill,
Collier, Shannon, Rill & Scott
1055 Thomas Jefferson Street, N.W.,
Washington, D.C., 20007

Dear Mr. Rill:

Your letter of October 14, 1981, requesting a determination of whether certain Toro mowers are consumer products was received on October 19, 1981, and has been forwarded to our staff for their comments on the use and distribution patterns for these mowers. In our initial review of your letter, we noted a couple of areas in which additional information would be useful.

First, it would be helpful if production figures for each of the three models involved could be furnished. If your client considers this information confidential, the Commission would keep the information in a restricted file. If a request for disclosure of the information were received, you would be given an opportunity to document your claim before any determination is made of whether the material can be withheld. If the information is found to be releasable, the procedures of 15 U.S.C. § 2055(a) would apply (95 Stat. 357 et seq., 1981).

Also, with regard to note 4 of your letter, we would like to find out whether there is further information about the survey of warranty cards that might be useful in evaluating this question. Specifically, we would like to know what criteria were used in the evaluation of the survey to determine who was a commercial user and what constitute "primarily consumer uses." Perhaps it could be arranged for a member of our staff to discuss this survey with Mr. Wallace.

Sincerely,

Stephen Lemberg

Stephen Lemberg
Assistant General Counsel

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* Not Admitted in D. C.

Walter Flowers
William F. Fox, Jr.
Of Counsel

October 14, 1981

Margaret Freeston, Esq.
Acting General Counsel
Consumer Product Safety Commission
Washington, D.C. 20207

Dear Ms. Freeston:

This letter is a request on behalf of the Toro Company ("Toro") for an interpretation, pursuant to 16 C.F.R. § 1000.7, of the Consumer Product Safety Act as it applies to the Commission's Safety Standard for Walk-Behind Power Lawn Mowers, 16 C.F.R. Part 1205. Specifically, Toro requests a determination whether the lawn mower herein described constitutes a "consumer product" within the meaning of the Consumer Product Safety Act, 15 U.S.C. § 2501, et seq. and of such standard.1/

Toro manufactures and sells a line of walk-behind mowers for commercial use. This line includes the three 5- and 6-horsepower models described herein and in the attached exhibits which, because of their design, weight and cost characteristics, are neither marketed nor purchased for consumer use. These mowers have cutting widths of 21" and 25" and weigh less than 200 pounds, and therefore do not satisfy the express exclusionary criteria set forth at 16 C.F.R. § 1205.1(c). Nevertheless, these mowers are not consumer products within the terms or objectives of the Act or the standard. To construe the Act or standard so as to define these commercial mowers as consumer products would unnecessarily and substantially increase Toro's manufacturing costs without in any way contributing to a reduction in the risk of injury to consumers. For the reasons set out below, the three referenced commercial mowers should not be included in any definition of consumer product encompassed by 16 C.F.R. § 1205.

1/ Descriptions of these three mowers and their specifications and model identification are contained in Exhibits 1 and 2, attached.

It is clear that the characteristics listed in 16 C.F.R. § 1205.1(c) are illustrative only and do not operate to define with exclusivity those mowers which are commercial rather than consumer products. The Commission confirmed the illustrative, non-limiting nature of § 1205.1(c) by its August 14, 1980 advisory opinion to Bachtold Brothers, Inc. In that ruling, § 3(a)(1) of the Act was construed so as to exclude from the definition of "consumer product" a commercial mower produced by Bachtold with a cutting width of only 26 inches. Bachtold Bros., Inc., CPSC Advisory Opinion No. 278 (August 14, 1980). The opinion made no reference to 16 C.F.R. § 1205.1(c), correctly construing that provision as an absolute exclusion of qualifying mowers, regardless of any other considerations, but not as precluding the exclusion of other types of mowers from classification as "consumer products" where the language and purposes of the Act and regulations so warrant. See CPSC discussion of the § 1205.1(c) exclusion at 44 Fed. Reg. 9998 (Feb. 15, 1979). Cf. Southland Mower Co. v. CPSC, 619 F. 2d 499, 505 n. 11 (5th Cir. 1980).

Exclusion from the definition of "consumer product" of the three identified Toro heavy-duty mowers would be consistent with the purposes of the Consumer Product Safety Act, the policies implemented by the Commission in issuing exclusions, and the considerations articulated in the Bachtold Advisory Opinion No. 278. Several physical and cost characteristics and marketing patterns relative to these mowers support such an exclusion.

1. Distinctive physical and performance characteristics.

The function and design characteristics of Toro's heavy-duty commercial mowers, when compared with Toro's lighter, less expensive consumer models, make it extremely unlikely that a reasonable consumer would purchase any of these heavy-duty models for non-commercial use. As the chart below indicates, the five- and six- HP commercial mowers for which Toro seeks an interpretation are too heavy and are overpowered for normal consumer use, and present a dramatically different appearance, since the effort is made to provide special styling or eye-appeal with respect to the consumer mower.

Commercial Model	Closest Comparable Consumer Model
Model 23022 94 pounds	Model 16310 58 pounds
Model 23158 117 pounds	Model 16320 60 pounds
Model 23267 170 pounds	No Comparable Unit

To provide greater durability under conditions of continuous and rough use, Toro's heavy-duty commercial mowers have a heavy 12 gauge steel deck whereas its consumer mowers have a lighter weight, rust free aluminum deck with superior styling. Moreover, the heavy-duty mower has a one-inch diameter handle, designed for comfort during extended use, as compared with a three-quarter inch handle for the consumer product. The commercial mowers also have a bolt-on height-of-cut adjustment as opposed to the more readily adjustable but less durable adjustment mechanism on consumer models. The commercial models' two-stage air cleaner, a feature not found on consumer models, is designed to keep the engine clean under commercial conditions which are likely to include tall weeds, median strips, heavy dust and sand. Other distinguishing features between Toro's commercial and consumer models include plastic wheels on consumer mowers versus steel wheels on heavy-duty models, and an optional five-quart gas tank for continuous use, available only for commercial models.

Another major distinction as to the commercial mowers is the use of a significantly different engine. The typical engine on a consumer mower has a design life of only 250 hours, and such an engine is not suitable for the virtually continuous, eight-hour per day, operation of a commercial cutter. For the commercial mower, a special engine is required, which has better valves, a better cylinder, larger bearings, a larger crank shaft, etc., and which can be disassembled for repair. Such an engine is heavier and more expensive, and is the principal reason for the higher cost of a commercial mower. These engines have a typical design life of 1,000 hours or more, in order to meet the continuous duty requirement.

2. Relatively high cost of heavy duty mower.

Because of the above-described design characteristics, the price of the three heavy duty commercial mowers for which Toro seeks exemption from consumer classification is substantially greater than for consumer mowers of like cutting width. The following comparison of suggested retail prices indicates the price disparity:

	Heavy Duty Model	Closest Comparable Consumer Product
21" Hand-Propelled (Model No. 23022)	$450	$280
21" Self-Propelled (Model No. 23158)	$635	$350
25" Self-Propelled (Model No. 23267)	$1,025	No Comparable Model

Price differences, such as those between the heavy duty commercial-use mowers and the consumer mowers, were one factor the Commission relied on to exclude the Bachtold mower from the definition of consumer product in Advisory Opinion 278, supra.

3. Promotion and solication of business only from agricultural, industrial and commercial accounts.

Toro's line of commercial walk-behind mowers are distinctly labeled and promoted in a manner that separates them from the company's consumer line.2/ See Exhibits 1 and 2. Toro advertises its heavy duty line through ads in trade magazines such as "Weeds, Trees and Turf," "American School and University," "School Product News," "Government Product News," "Parks and Recreation" and "Grounds Maintenance."3/ It also provides separate and distinct trade newspaper ads for commercial dealers or distributors to run in their markets. The objective of Toro's advertising plan for commercial walk-behind power mowers is to reach the target audience, commercial users, through the most efficient media. This promotional approach is in contrast to that used for the consumer lawn mower line which is designed to reach a maximum audience, primarily through television advertising.

The Bachtold advisory opinion, supra, identified the manufacturer's promotional approach as a significant factor confirming the non-consumer nature of lawn mowers. In that opinion the Commission stated, "The non-consumer nature of these products is confirmed by . . . the fact that you advertise only to implement dealers and the agricultural market." Id. at 2. The Commission has also previously indicated that where a manufacturer separates a product line, as Toro does, so that products sold for commercial use are marketed separately from those sold for consumer use, CPSC has jurisdiction of the commercial line only if use and distribution patterns show that commercial items end up in consumer use. See CPSC Advisory Opinion No. 134 (October 4, 1974). The Court of Appeals for the District of Columbia has also considered distribution programs to be an important element in the definition of "consumer product" under the Consumer Product Safety Act. In ASG Industries, Inc. v. CPSC, 593 F.2d 1323, 1328 (D.C. Cir.), cert. denied, 444 U.S. 864 (1979) the court explained:

2/ Toro does not sell a consumer walk-behind lawn mower with an engine horse power exceeding 4, and to our knowledge, no walk-behind power mower with an engine exceeding 4HP is marketed as a consumer unit in the industry.

3/ A copy of Toro's annual advertising schedule for commercial mowers is attached as Exhibit 3. Proposed copy for an advertisement, not yet placed, featuring Toro's 5HP commercial mower is attached as Exhibit 4.

> The foremost limitation on the core definition of "consumer product" specifies a requirement that the product must be "customarily produced or distributed for sale to, or use or consumption by, or enjoyment of, a consumer." . . . Jurisdiction does not require a showing that a majority of product sales are to consumers, but there must be a significant marketing of the product as a distinct article of commerce for sale to consumers before the product may be considered as "customarily" produced or distributed in that manner.

The commercial models here at issue are not marketed to consumers, and are distributed predominately through direct sales by Toro's wholesale distributors to known commercial users.[4/] Therefore, under the above-quoted criterion, these mowers do not quality as consumer products.

As both the promotional program and design characteristics confirm, the Toro heavy-duty mowers are intended for employees' use in the scope of their employment; they are, therefore, subject to the standards and requirements of the Occupational Safety and Health Act. The Commission has previously considered this factor to be significant in determining whether an item is a consumer product within the scope of the Act. See CPSC Advisory Opinion No. 208 (June 5, 1975) (power lawn equipment, if sold to and used primarily by employees in the scope of employment, would not be consumer products); CPSC Advisory Opinion No. 94 (March 20, 1974) (products used exclusively in business offices as part of employment not covered consumer products).

4. Minimal risk and high cost of compliance.

As the Commission has explained in connection with its safety standard for Walk-Behind Power Lawn Mowers, 16 C.F.R. Part 1205, a low incidence of risk exposure is relevant to a determination of whether a product should be included within

---

4/ Toro's Director of Market Research, Jim Wallace, estimates that fewer than 5% of each of the three commercial mowers at issue ends up in consumer use. This estimate is based on a survey of warranty cards returned to Toro on each of the three mowers. These cards indicate that 85% of mowers are sold directly to commercial users. Of the remaining 15%, Mr. Wallace estimates, based on a telephone survey of registered owners, that no more than 5% of the commercial models end up in applications that could be regarded as primarily consumer uses.

the standard. CPSC observed with respect to the exclusion of reel-type mowers:

> [T]he economic and injury data . . . do not show that the risk of injury associated with reel-type mower justifies applying the standard to reel-type mowers. Reel-type mowers constitute less than 1% of the walk-behind mower market, and thus consumer exposure to that product is not as great.

44 Fed. Reg. 9997 (Feb. 15, 1979).

The five- and six-HP commercial mowers here at issue comprise a small share of the walk-behind mower market, comparable to that for reel-type mowers, and consumer exposure is similarly low. The last complete year of the Outdoor Power Equipment Institute's shipment data (1980) showed commercial mowers as comprising 1.8% of the total walk-behind power market.5/ Although the precise frequency of mower-caused injury to commercial users is unknown, it is reasonable to assume that these users have a better knowledge of power mowers because of their training and experience with the equipment, and thus have fewer accidents.6/

Another important factor supporting the Commission's absolute exclusion of certain mowers under 16 C.F.R. § 1205.1(c) was the high cost of compliance. The Commission stated:

> The economic burden for these manufacturers [of large mowers] could be greater than that for the manufacturers of the smaller mowers usually used by consumers since they must spread the cost of compliance over fewer production units.
>
> Since the cost per unit would be higher, manufacturers might choose to drop models or leave the industry.

44 Fed. Reg. 9998 (Feb. 15, 1979).

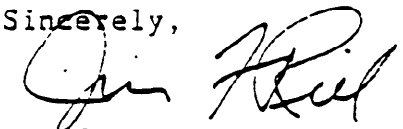
5/ Although these data include only those manufacturers who are members of OPEI, they illustrate the low level of exposure generated by commercial lawn mowers.

6/ An additional indication that mowers designed for commercial use do not present the same level of risk as those designed for ordinary consumer use can be derived from NEISS figures for hospital emergency room use for power mower related injuries by age of victim. These figures show that 33% of injuries occur in the 0-14 and over 65 age groups — groups which obviously exclude commercial users.

Because Toro's heavy-duty line is developed and its contributions to the company are evaluated independently of its consumer line, the economic burden of compliance with 16 C.F.R. § 1205 would fall directly on the relatively low volume commercial line. Compliance with the lawn mower safety standard would impose a substantial economic burden on Toro and could, therefore, significantly curtail the availability of the product — a consideration which the Commission and the courts recognize to be relevant to a standard's coverage. See 44 Fed. Reg. 9998 (Feb. 15, 1979); ASG Industries, Inc. v. CPSC, 593 F.2d 1323 (D.C. Cir. 1979); D.D. Bean & Sons Co. v. CPSC, 574 F.2d 643 (1st Cir. 1978); Aqua Slide 'N' Dive v. CPSC, 569 F.2d 831 (5th Cir. 1978).

For all the foregoing reasons, Toro requests an interpretation that the heavy duty lawn mowers herein discussed and more fully described in Exhibits 1 and 2 attached are not consumer products within the meaning of the Consumer Product Safety Act, 15 U.S.C. § 2501 et seq. and the Safety Standard for Walk-Behind Power Lawn Mowers, 16 C.F.R. Part 1205.

Sincerely,



JAMES F. RILL
Attorney for The Toro Company

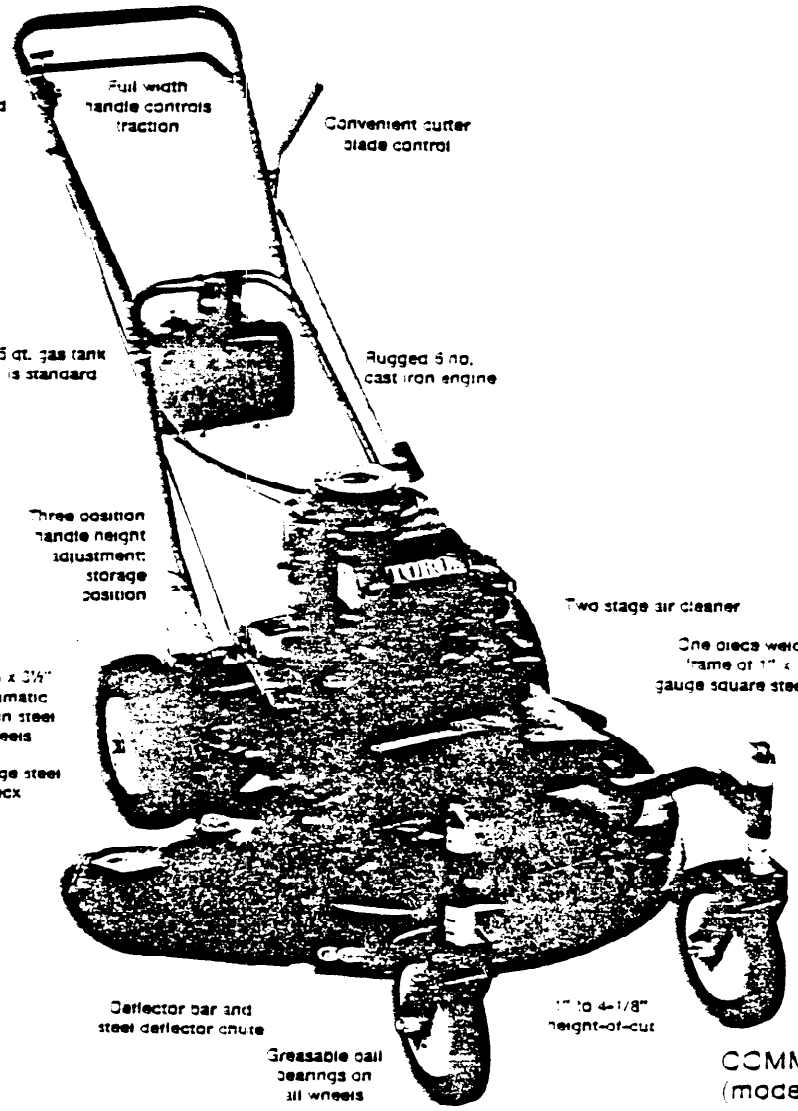
JFR:jlk

Attachments

EXHIBIT 1

TORO®

COMMERCIAL 25-6 WALK POWER MOWER

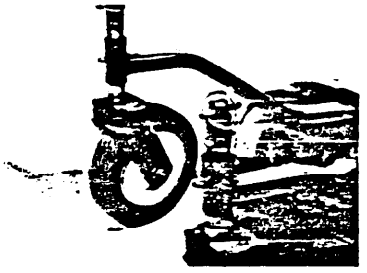


COMMERCIAL 25-6
(model no. 23267)

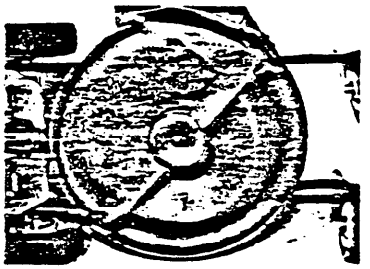
A self-propelled, high capacity mower engineered for smooth handling over rough terrain and reliable day in, day out commercial service.

Just a few ways Toro® builds more dependable performance and longer life into the Commercial 25.

Powerful 6 hp, 4 cycle, cast iron engine with 1" crankshaft, 27 oz. oil capacity with ample lubrication by means of an oil pump.



Rugged suspension system utilizes caster wheel with convenient spacer arrangement in front, and pivot arms in the rear for easy height-of-cut adjustment.



Solid 13 gauge steel deck with extra strength cutter bar and anti-scalp disc.

SPECIFICATIONS*

COMMERCIAL 25-6
Self-Propelled (Model No. 23267)

ENGINE	6 HP @ 3600 R.P.M. Governor set at 3200 R.P.M., 4 cycle, 27 oz. oil capacity, 13.53 cu. in. displacement, dry element air cleaner, recoil starter (Tecumseh).
FUEL CAPACITY	5 qt. gas tank mounted on handle.
TRACTION CLUTCH (SP MODEL)	Tight slack V-belt clutch operated by control bail on handle. Control bail disengages traction drive when released by operator.
TRACTION DRIVE (SP MODEL)	Rear wheel drive with a one way over-running roller clutch between speed reducer and each rear wheel.
GROUND SPEED	3 MPH at 3200 R.P.M.
TIRES/WHEELS	10.25" x 3.50" semi-pneumatic rear tires on steel disc wheels. 8" x 1.75 semi-pneumatic front tires on steel disc wheels. Greasable ball bearings on all four wheels.
FRAME	One piece welded 1", 12 gauge square steel tube.
MOWER HANDLE	7/8", 16 gauge chrome plated, steel tubing in separate halves. Three position handle height adjustment and storage position.
CONTROLS	Throttle control wire and casing located on mower handle for choke and shut-off. Cutter blade control with adjustable control rod. Dead-man handle controls tight-slack V-belt traction drive clutch.
HOUSING	13 gauge stamped steel. Spiral grass chamber, right hand discharge. Steel deflector chute. Also has rear deflector shield between rear wheels.
CERTIFICATION	Certified to meet ANSI B71.1b-1977 safety specifications which meet federal and state OSHA regulations.
BLADE	25" hardened high carbon steel, positive attachment with one fastener to spindle with V-belt drive from engine.
HEIGHT-OF-CUT	1" to 4-1/8" adjustable in 5/8" increments.
WEIGHT	161 lbs.
DIMENSIONS	33-3/4" width with deflector; 19-1/2" height less handle with wheels set at 1" height-of-cut; 44" length without handle and with rear safety shield.
ACCESSORIES	Optional: Spark arrestor muffler — Toro P/N 23-3960 with 2811-6 street elbow and 3290-154 locknut — is a United States Department of Agriculture and United States Forest Service approved exhaust system. Approval number is 10291.

Commercial Products Division

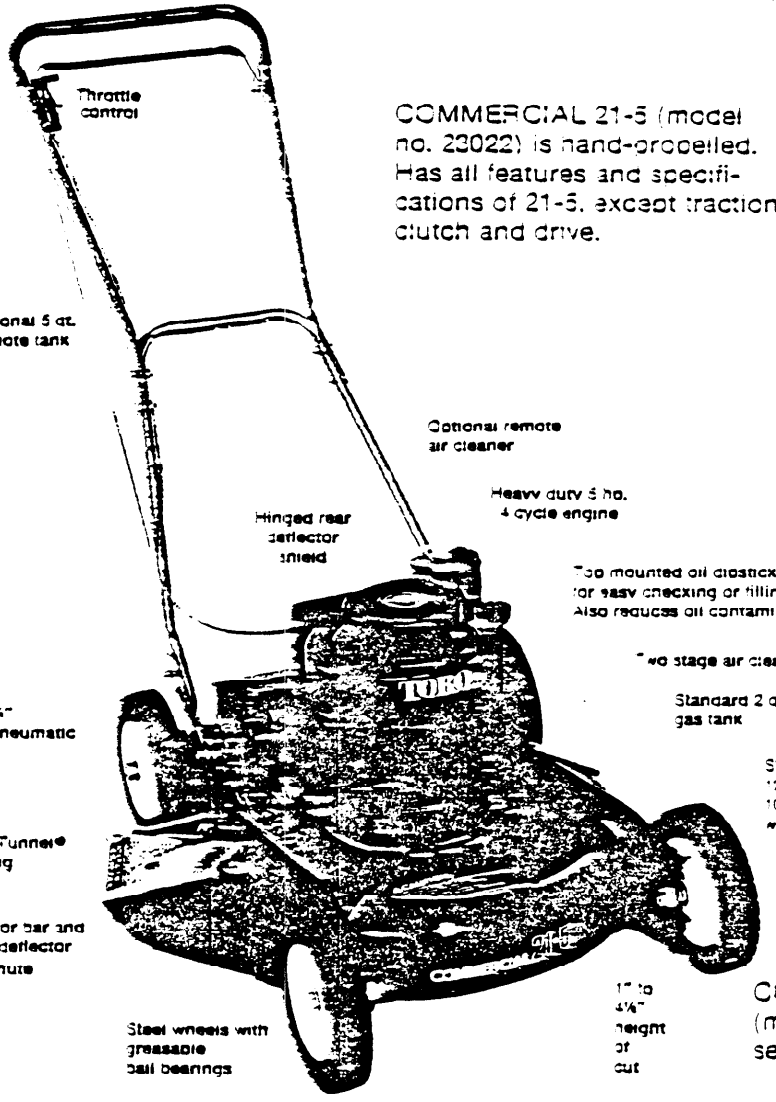
TORO®
The Professionals

*Specifications and design are subject to change without notice. Toro is an exclusive trademark of The Toro Company, 8111 Lyndale Avenue South, Minneapolis, Minnesota 55420. Printed in U.S.A.
Form No. 80-130-T

EXHIBIT 2

TORO®

COMMERCIAL 21-5 WALK POWER MOWERS

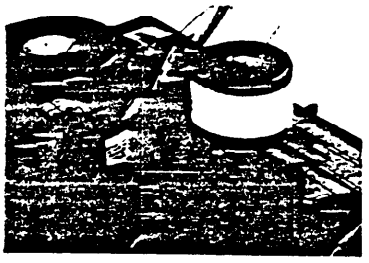


COMMERCIAL 21-5 (model no. 23022) is hand-propelled. Has all features and specifications of 21-5, except traction clutch and drive.

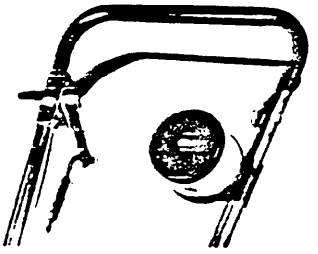
COMMERCIAL 21-5 (model no. 23158) is self-propelled.

Your choice of self-propelled or hand-propelled models simply, ruggedly and durably engineered for commercial use.

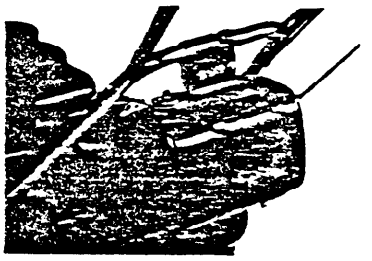
Just a few of the features that make these Toro® Commercial mowers run stronger, last longer.



Oil dipstick is well above engine, easy to get to. Checking and adding oil is easier when needed, and there's less chance of contaminating the oil. That adds up to longer engine life.



Remote air cleaner option positions air intake well away from the heaviest concentrations of grass, dust and other contaminants. Promotes longer engine life.



Optional 5 quart remote fuel tank.

SPECIFICATIONS*

COMMERCIAL 21-5

Self-Propelled (Model No. 23158) Hand-Propelled (Model No. 23022)

ENGINE	5 HP @ 3600 R.P.M. Governor set at 3000 R.P.M., 4 cycle, 28 oz. oil capacity, 12.6 cu. in. displacement; crankshaft extension 1" diameter x 1-13/16" long. Dual element air cleaner, recoil starter (Briggs & Stratton)
FUEL CAPACITY	2 qt. gas tank mounted on engine.
TRACTION CLUTCH (SP MODEL)	Tight slack V-belt clutch operated by control bail on handle. Control bail disengages traction drive when released by operator.
TRACTION DRIVE (SP MODEL)	Rear wheel drive with a one way over-running roller clutch between speed reducer and each rear wheel.
GROUND SPEED	3 MPH @ 3000 R.P.M.
TIRES/WHEELS	Four 8" x 1.75" semi-pneumatic tires mounted on stamped steel wheels. Greasable ball bearings on each wheel.
FRAME	10 gauge steel supports welded to housing.
MOWER HANDLE	7/8", 16 gauge chrome plated, steel tubing in separate halves. Three position handle height adjustment and storage position.
CONTROLS	Throttle control wire and casing located on upper handle for choke and shut-off.
HOUSING	12 gauge stamped steel. Spiral grass chamber, right hand discharge, deflector bar and steel deflector chute. Also has rear deflector shield between rear wheels.
CERTIFICATION	Certified to meet ANSI B71.1b-1977 safety specifications which meet federal and state OSHA regulations.
BLADE	21" hardened high carbon steel, positive attachment with one fastener to engine crankshaft.
HEIGHT-OF-CUT	1" to 4-1/8" adjustable in 5/8" increments.
WEIGHT	100 lbs. — SP model 82 lbs. — HP model
DIMENSIONS	Width 26-1/2"; length 32-1/2"; height 15" less handle with wheels set at 1" height-of-cut.
ACCESSORIES	Optional: Spark arrestor muffler — Briggs & Stratton muffler assembly 391313 and outlet exhaust screen 392194. Exhaust system approved by United States Forest Service. Approval number 391913. Remote air cleaner kit P/N 28-0580. Remote fuel tank kit of 5 quart size P/N 28-5590.

Commercial Products Division

TORO®

The Professionals

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Form No. 80-132-T

CPSA Sec. 3(a)(1) - Lawn Mowers

MEETING LOG

CPSC ORGANIZATIONAL UNIT REPORTING: OGC

DATE OF MEETING: September 28, 1981.

PLACE OF MEETING: 8th Floor Conference Room, 1111 18th St., N.W., Washington, D.C.

SUBJECT OF MEETING:

Possible OGC determination of whether certain walk-behind power lawn mowers are consumer products.

COMMISSION UNITS REPRESENTED & NAMES OF COMMISSION PARTICIPANTS:

OGC: Margaret A. Freeston, Acting General Counsel
Stephen Lemberg, Assistant General Counsel
Harleigh Ewell, Attorney-Advisor

NON-COMMISSION ORGANIZATIONS OR GROUPS REPRESENTED AND NAMES OF PARTICIPANTS:

James F. Rill and Judy Oldham, Collier, Shannon, Rill & Scott, Attorneys for Toro Company

Vern Johnson, Vice-President of The Toro Company

ISSUES DISCUSSED, DECISIONS MADE, ACTION TAKEN OR PLANNED:

Mr. Rill presented a draft letter that would request a determination of whether 3 particular "commercial" walk-behind power lawn mowers manufactured by Toro Co. were consumer products and thus subject to 16 C.F.R. Part 1205. The letter showed that there were substantial differences between the cost and weight of these mowers and the mowers that Toro deemed their closest comparable consumer mowers. The subject mowers were also designed for a longer operating life and to be rebuildable.

The OGC participants indicated that this information would be useful in considering this issue, but that no indication of a likely outcome of the determination could be made until the views of the Commission's technical staff had been obtained.

It was suggested that any information that could show the number of mowers that are likely to be sold to consumers be included in the letter. Mr. Rill indicated that a revised letter would probably be submitted within a week.