



U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

Record of Commission Action Commissioners Voting by Ballot*

Commissioners Voting: Acting Chairman Robert S. Adler
 Commissioner Elliot F. Kaye
 Commissioner Dana Baiocco
 Commissioner Peter A. Feldman

ITEM:

Petition to Amend Warning Label Requirements in 16 C.F.R. Part 1205, Safety Standard for Walk-Behind Power Lawn Mowers (CP 19-1)
(Briefing package dated April 15, 2020 OS# 0014)

DECISION:

On May 4, 2020, the Outdoor Power Equipment Institute Inc. (OPEI or petitioner) withdrew its February 19, 2019 petition prior to the Commission vote. (See attached letter). Accordingly, the Commission did not take any action on the petition. Acting Chairman Adler and Commissioner Kaye filed a joint statement regarding this matter.

For the Commission:

Alberta E. Mills
Secretary

*Ballot vote due May 7, 2020

(Commissioner Feldman extended the vote due date from April 21, 2020 to April 24, 2020. The vote due date was further extended to May 7, 2020 by a Commission poll on April 24, 2020).

Attachments: Letter from Daniel J. Mustico, OPEI
 Joint Statement by Acting Chairman Adler and Commissioner Kaye

From: [Dan Mustico](#)
To: [Mills, Alberta E.](#)
Subject: OPEI request for withdrawal of petition "CP 19-1"
Date: Monday, May 04, 2020 4:05:25 PM
Attachments: [OPEI request for withdrawal of CPSC petition CP 19-1.pdf](#)
Importance: High

Secretary Mills:

Please see attached our request for the immediate withdrawal of petition "CP 19-1", prior to the vote scheduled this week (May 7).

Please confirm with me when this action is taken, and let me know if there are any immediate questions.

Best regards,
Dan

Daniel J. Mustico

Vice President, Government & Market Affairs

Outdoor Power Equipment Institute, Inc.

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**U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814**

**STATEMENT OF ACTING CHAIRMAN ROBERT S. ADLER AND COMMISSIONER ELLIOT F. KAYE
REGARDING OPEI PETITION TO AMEND WARNING LABEL REQUIREMENTS OF
CPSC SAFETY STANDARD FOR WALK-BEHIND POWER LAWN MOWERS (CP 19-1)**

May 12, 2020

On February 19, 2019, the Outdoor Power Equipment Institute (OPEI) filed a petition requesting that CPSC amend the warning label requirements for its safety standard for walk-behind power lawn mowers¹ (CP 19-1). At that time, the CPSC Office of General Counsel docketed the request and the Commission published a notice of the petition in the Federal Register seeking comments on the petition.

OPEI sought to have the Commission amend the warning label requirements in § 1205.6 of the standard in order to permit a pictorial-only warning as an alternative to the current label requirements. After a careful and thorough technical analysis, staff concluded that the petitioner's recommended approach was less likely to communicate the safety information necessary to warn the public than the current required warning label requirements. Staff further determined that OPEI's pictorial-only approach was unclear and unlikely to motivate users to take necessary steps to avoid the hazard. Accordingly, staff recommended denying the petition.

On April 22, 2020, OPEI wrote to the Commission indicating that they had just received notice that the Commission was about to vote on their petition and requesting a postponement of the vote given their challenges in carrying out business during the coronavirus crisis. In response, the Commission agreed to postpone the vote for two weeks in order to give the petitioner time to submit any further information that they wished to share. On May 4, the petitioner submitted a lengthy letter requesting withdrawal of their petition.

Although the petitioner has every right to withdraw its petition, we are concerned by what we perceive to be an unsettling trend – petitioners withdrawing petitions in an effort to preclude the Commission from continuing to consider matters when it appears that the Commission will

¹ 16 CFR Part 1205.

not vote in their favor.² For this reason, we feel it important to go on record as indicating that had it come to a vote, we would have voted to deny the petition. Although we understand OPEI's desire to have a warning label that could be used internationally, we see nothing in the standard that would preclude them from including their pictorial warning in addition to the required warning in the CPSC's safety standard. In our opinion, however, simply replacing the current required warnings would result in a demonstrable reduction in safety.

Of course it is lawful for petitioners to withdraw their petitions, however, we find it deeply disappointing that petitioners would cut the process short at the last minute after countless staff hours and agency resources have been expended to address the merits of those petitions. Regardless of whether a petitioner chooses to withdraw a petition, we note that the CPSC always retains the authority to make the final decision to initiate or terminate rulemaking with respect to issues raised by a petitioner.³

² *See, for example*, Petition CP 18-1: Petition for Inflatable Head Protective Devices (withdrawn September 17, 2019); and Petition CP 17-1: Requesting Rulemaking to Establish Safety Standards for Magnet Sets (withdrawn April 22, 2020).

³ 16 CFR Part 1051.10(b) ("The Commission must make a final decision as to the issuance, amendment, or revocation of a rule on the basis of all available relevant information developed in the course of the rulemaking proceeding.")