Dear Mr. Rill:

This is in response to your letter of August 27, 1982, concerning the request of Sarlo Power Mowers, Inc., ("Sarlo") for an advisory opinion regarding the status of their highwheel power lawn mowers as consumer products, as defined in 15 U.S.C. § 2052(a)(1). In an earlier exchange of correspondence, we advised you that the information available to us as of August 18, 1982, was insufficient to determine whether these mowers were consumer products.

In your more recent letter, you explain that Sarlo does not believe that it would be able to obtain sufficient information to establish that its mowers are not used more than occasionally by consumers. Accordingly, you ask for an indication of how the Commission would view a...
We would also suggest that Sarlo include sufficient checks in its marketing system to ensure that the system operates as intended, since our determination could change if information showing more than occasional use by consumers becomes available. --

While the views expressed in this letter are based upon the most current interpretation of the law by this office, they could subsequently be changed or superseded by the Commission. Please do not hesitate to contact me if you have further questions regarding these matters.

Sincerely,

Martin Howard Katz
General Counsel
Sarlo Power Mowers, Inc., was extremely disappointed with your response to their July 21, 1982 request for an advisory opinion regarding the commercial status of their highwheel products. Sarlo believes that both its product and its sales and distribution patterns are identical to those of its competitors who have received opinions that their products are commercial mowers and are, therefore, excluded from the Safety Standard for Walk-Behind Mowers.

Sarlo's request included very specific information, painstakingly assembled, as to the disposition of at least 90% of its products. Yet, you have concluded that the amount of information submitted is insufficient because Sarlo presented no records with respect to 100% of its sales, representing single-unit transactions, and failed to identify or precisely quantify the retail purchases from the commercial market, as well as the nature and level of rental transactions.

Sarlo has concluded that it is not possible to obtain precise information in each of these areas sufficient to satisfy your request with respect to purchasers' identities or precise percentages of consumer versus commercial users. An exhaustive search in this regard would consume valuable time and money, and is unlikely to yield sufficient additional information. At the same time, it would be extremely unfair to Sarlo if, as a result of the Commission's decision, it were forced to relinquish its share of the commercial highwheel market to its competitors who have received favorable opinions and are able to supply non-complying units as requested by commercial establishments and
The production of specially designated non-complying machines, should satisfy your requirement that Sarlo "control or document its channels of distribution in such a way as to assure that the mowers in question are not sold to or used by consumers more than occasionally." No orders for such units would be filled for purchasers other than

Sarlo requests your immediate consideration of this proposal so that it may continue to compete in this limited segment of the highwheel market. Please contact us if we can provide additional information to expedite this matter in any way.

Sincerely;

JAMES F. RILL
Attorney for Sarlo Power Mowers, Inc.
James F. Rill, Esq.
Collier, Shannon, Rill & Scott
Attorneys-at-Law
1055 Thomas Jefferson Street, N.W.
Washington, D.C. 20007

Dear Mr. Rill:

This letter responds to your letter of July 21, 1982 in which you request a determination of whether certain models of high-wheel lawn mowers manufactured by Sarlo Power Mowers, Inc. ("Sarlo") are consumer products and thus subject to the Safety Standard for Walk-Behind Power Lawn Mowers, 16 CFR Part 1205. The data you have submitted are insufficient to determine whether these mowers are consumer products.

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. 1153, 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.
Although much of the information you have submitted concerning these Sarlo mowers would tend to show their suitability for commercial use, the possibility remains that these mowers are sold to, or used by, consumers more than occasionally. For example, the which markets of the mowers in the sampling of accounts on page four of your letter, states that it sells these mowers "primarily" to businesses and to individuals who use the mowers in their lawn and garden businesses. This obviously leaves open the possibility that there could be a significant degree of consumer use of these mowers.

In addition, the approximately of Sarlo's production that is not included in the sample mentioned above consists largely of single-unit transactions. Sales to consumers may be more likely to be reflected in such transactions than in the bulk transactions described in the chart on page four.

Furthermore, the chart in your letter indicates that a number of these mowers are sold to rental outlets. The extent to which these rental mowers may be used by consumers has not been established.

We note that there is an indication in your letter that there may be a consumer demand for these mowers. It is not clear how the price, weight, or other features of the complying mower that is to be produced would motivate these consumers to purchase the complying version rather than the commercial version.

Generally, the manufacturer of a product should be in the best position to determine the use and distribution patterns of the product. We recommend that manufacturers consider their products to be consumer products unless the available information clearly establishes that this is not the case.

If Sarlo is able to control or document its channels of distribution in such a way as to assure that the mowers in question are not sold to or used by consumers more than occasionally, the mowers would not be consumer products. However, we believe that the information available at this time is insufficient to make such a determination.

Sincerely,

[Signature]

Martin Howard Katz
General Counsel
TO: THE FILE

FROM: Susan Birenbaum, Special Assistant to the General Counsel

SUBJECT: Telephone Conversation Between Judith Oldham, Collier, Shannon and Rill, and Susan Birenbaum
Re: Sarlo Mowers

Jim Rill is out of town and will be back tomorrow morning.

I spoke to Judith Oldham and read her the letter on Sarlo mowers and said it would be sent out tomorrow morning.

Judith Oldham said Sarlo would submit further information and wanted fast determination. I told Ms. Oldham we would do all we could to expedite but that the type of information submitted would influence the amount of time it would take to analyze.

Ms. Oldham stated that Yazoo wanted us to reconsider. I told her to have them write us a letter.
TO: Carl W. Blechschmidt, EX-P
THROUGH: Walter R. Hobby, AED, Economics
FROM: Gregory B. Rodgers, ECCP

SUBJECT: Commercial Exemption to the Mower Standard for Sarlo Power Mowers, Inc.

Sarlo Power Mowers, Inc. has requested that its line of commercial mowers be exempted from the mower standard. There is some confusion in their attorney’s letter of July 21, 1982, concerning which models are actually included in the request (compare pages one and three of that letter), but we believe the more inclusive list on page three is accurate. Our comments will therefore pertain to the mowers specified on page three.

Sarlo produces a relatively small volume of commercial mowers. They are intended for heavy duty use and are built with high-wheels for use on rugged terrain. The width of cut of these models range from 20 inches to 26 inches, and the engines range from 4 to 8 horsepower. Their weight varies from 88 to 164 pounds, and their suggested 1981 list price ranges from almost $400 to over $900.

It should be noted that the weight and price of some of the smaller models are not inconsistent with the price and weight of mowers in the upper end of the consumer market.

To accommodate occasional consumer purchases of its high-wheeled mowers Sarlo intends to manufacture a 21 inch, 4 horsepower mower that does comply with the mower standard. Sarlo also intends to instruct its dealers and distributors that, with the exception of the complying consumer model, the Sarlo mowers are not intended for consumer use and should be sold to commercial users.
products covered by the Act would impose a substantial compliance burden on Sarlo without reducing any actual risk of injury to consumers.

1. Sarlo's High-Wheel Mowers Possess the Physical Characteristics of Commercial Equipment

Sarlo's line of commercial quality high-wheel mowers includes 4-8 HP hand-push and self-propelled mowers with cutting widths of 21-26". Sarlo's mowers are similar in every respect to other high-wheel mowers which the Commission has recently classified as commercial. The high-wheel mowers are designed with heavy-duty features and durable materials suitable for the long-term, continuous and rough use they receive during commercial applications. For example, the extra-heavy gauge steel stamped deck is welded to a tough angle iron frame for maximum strength and long life. The Sarlo hub and spindle components are designed to withstand severe stress; the separate belt-driven spindle minimizes shock and abuse of the engine components during commercial applications. Similarly, the plowshear-type handle and 15-20" diameter pneumatic rear tires are designed for use on rough terrain and tall grasses.

The high-wheel models for which Sarlo seeks an interpretation have Briggs & Stratton engines. Most of Sarlo's high-wheel mowers are also available with the Briggs & Stratton engine.

Because of the commercial quality materials and features used in Sarlo's high-wheel mowers, these mowers also cost more than the typical mower sold for consumer use. As the following price list suggests, the typical consumer is not likely to purchase a commercial quality high-wheel mower for home applications:
Collier, Shannon, Rill & Scott

Page Three

<table>
<thead>
<tr>
<th>Model</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>21&quot; cut</td>
<td>Push, 4 h.p. Briggs</td>
</tr>
<tr>
<td>16&quot; Wheels</td>
<td>Self Propelled 4 h.p. Briggs</td>
</tr>
<tr>
<td>Semi-Pneu Tires</td>
<td>416SP</td>
</tr>
<tr>
<td>21&quot; cut</td>
<td>Self Propelled 4 h.p. Briggs</td>
</tr>
<tr>
<td>20&quot; Wheels</td>
<td>420SP</td>
</tr>
<tr>
<td>Pneumatic Tires</td>
<td></td>
</tr>
<tr>
<td>21&quot; cut</td>
<td>Push, 4 h.p. Briggs</td>
</tr>
<tr>
<td>20&quot; Wheels</td>
<td>5 h.p. Briggs</td>
</tr>
<tr>
<td>Semi-Pneu Tires</td>
<td>V5B2</td>
</tr>
<tr>
<td>V5B3</td>
<td>Push, 5 h.p. Briggs</td>
</tr>
<tr>
<td>24&quot; Cut</td>
<td>Push, 5 h.p. Briggs</td>
</tr>
<tr>
<td>20&quot; Wheels</td>
<td>524SP</td>
</tr>
<tr>
<td>Pneumatic Tires</td>
<td>Self Propelled, 5 h.p. Briggs</td>
</tr>
<tr>
<td>26&quot; cut</td>
<td>Self Propelled, 8 h.p. Briggs</td>
</tr>
<tr>
<td>20&quot; Wheels</td>
<td>800A</td>
</tr>
<tr>
<td>Pneumatic Tires</td>
<td>Synchro Balanced</td>
</tr>
</tbody>
</table>

Based on the physical characteristics and increased cost of the high-wheel mowers, they should not be regarded as consumer products within the coverage of the Consumer Product Safety Act.

2. Sarlo's High-Wheel Mowers Are Marketed Primarily to Commercial and Agricultural Users

Sarlo's high-wheel mowers are not marketed as an article of commerce for sale to the typical consumer. As indicated in numerous letters submitted by Sarlo's distributors and dealers, Sarlo's marketing and promotional activity is directed exclusively toward commercial and agricultural users. Sarlo advertises its high-wheel mowers only in publications intended to reach commercial and agricultural users. Moreover, while Sarlo does not have reliable information on the ultimate disposition of all of its mowers, they are marketed primarily to commercial and agricultural users.

1/ These letters are attached as Appendix B.
Sarlo advertises its mowers exclusively in publications intended for commercial and agricultural users. It does not have full information on the ultimate purchasers of all of its mowers, but did piece together information on about two thirds of its 19804981 sales. That information suggests that the high proportion of its mowers are in fact purchased by commercial users. Mr. Sarlo also believes that the remaining one third of 19804981 sales would be very similar to the sales that were accounted for. Several letters from Sarlo's dealers and distributors were enclosed with the exemption request to attest to the commercial nature of the Sarlo mowers.

Because of the physical and price characteristics mentioned, the arguments for the exemption of several of the mower models are somewhat weaker than in previous exemption requests. However, the manufacturer has provided information which indicates that the Sarlo mowers are intended for commercial use and that the great majority are sold to commercial users. It is therefore our opinion that the specified Sarlo mowers are not normally used by consumers and should be exempted from the mower standard.
Memorandum

TO: Carl Blechschmidt, OPM
Through: Martin Howard Katz, General Counsel

FROM: Harleigh Ewell, OGC

SUBJECT: Request of Sarlo Power Mowers, Inc., for a Jurisdictional Determination for Their High-Wheel Mowers

Attached is a copy of a request on behalf of Sarlo Power Mowers, Inc. for a determination that their high-wheel mowers are not consumer products and therefore not subject to the power mower standard. Please obtain any comments that the staff might have concerning the use and distribution patterns for these mowers.
July 21, 1982

Martin Katz, Esq.
General Counsel
Consumer Product Safety Commission
5401 Westbard Avenue
Bethesda, Maryland 20207

Dear Mr. Katz:

This letter is a request on behalf of Sarlo Power Mowers, Inc. ("Sarlo") for an interpretation, pursuant to 16 C.F.R. § 10007, 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 ("Standard"). Specifically, Sarlo requests a determination that certain of its high-wheel lawn mowers are "commercial" rather than "consumer" products and are therefore, covered by the Consumer Product Safety Act, 15 U.S.C. § 2501, et seq.

Sarlo manufactures a line of high-wheel walk-behind lawn-mowers designed to meet the needs of commercial users in rural and agricultural areas of the United States. Located in Fort Meyers, Florida, Sarlo is the oldest family-owned rotary mower manufacturer in the United States, and the first to sell the high-wheel mower. Today Sarlo produces approximately 12,000 high-wheel mowers annually. The mowers for which Sarlo requests an interpretation are identified as 416 and 416-SP (21"-cut, 4 HP), 420-SP (21"-cut, 4 HP), V5B2 (21"-cut, 5 HP), 524 and 524-SP (24"-cut, 5 HP), and 800A (26"-cut, 8 HP). Descriptions of these commercial mowers and their specifications are contained in Appendix A, attached. In order to accommodate the occasional consumer who may wish to purchase a high-wheel mower for home use, Sarlo will also manufacture a 21"-cut, 4 HP mower with a deadman type control that complies with the new CPSC standard.

Although Sarlo's high-wheel mowers do not satisfy any of the express exclusionary criteria set forth at 16 C.F.R. § 1205.1(d), their physical characteristics, marketing system, and actual sales patterns indicate that they are not consumer products within the terms or objectives of the Consumer Product Safety Act or the Standard. To construe them to be consumer
mowers, Sarlo's President, Mr. Arnold L. Sarlo, has been able, through the use of invoices and returned warranty cards, to compile the following information regarding purchasers of high-wheel mowers during the 1980-81 season.

The information reflected in this chart accounts for approximately 15% of Sarlo's high-wheel mower sales in 1980-81. Mr. Sarlo believes, based on his lifelong experience with the firm, that the distribution and use patterns for the remaining 85% of the mowers sold last year would be very similar to those represented on the chart. Mr. Sarlo has indicated that the mowers not reflected on the chart are sold one-at-a-time on a "made to order" basis, i.e., the dealer will have ordered the mower for a known commercial user. Since the mowers not accounted for on the chart are single unit transactions to hundreds of different users, they are more difficult to trace than the bulk transactions reflected on the chart. Mr. Sarlo has stated, however, that if a more detailed accounting of the remaining mower sales is necessary to obtain a "commercial" designation for Sarlo's high-wheel products, he will attempt to compile more complete data.

* These equipment sales and rental outlets purchase high-wheel units which they designate as "California Weed Cutters"; they are used primarily in commercial applications characterized by large expanses of tall, dense weeds.

** The Vice-president of the company has confirmed that his company stores sell Sarlo's high-wheel mower primarily to businesses and individuals who use the mowers in their lawn and garden businesses.
Because the Commission's decision on this matter will have a major impact on Sarlo's future operations, we request a status determination at the earliest time possible. We trust that the Commission will be able to expedite this matter, particularly in light of the similarities between Sarlo's high-wheel products and those recently categorized as non-consumer products by the Commission.

Sincerely,

JUDITH L. OLDHAM

JLO: jab
### MODEL 4 16 SPECIFICATIONS
- **CUTTING SWAITH**: 21" diameter
- **WHEELS, REAR**: 20" x 1 1/2" semi-pneumatic
- **TIRES, REAR**: 20" x 1 1/2" semi-pneumatic
- **FRONT WHEELS**: 6" x 1 1/2" pneumatic
- **DRIVE BELT**: 21" x 3/8" x 2 1/4" Shafterproof Airlift
- **BLADE**: 21" x 3/8" x 2 1/4" Shafterproof Airlift
- **ENGINE**: 4 hp Briggs & Stratton
- **SELF-PROPELLING UNIT**: Sarlo Model 3100

### MODEL 4 16SP SPECIFICATIONS
- **CUTTING SWAITH**: 21" diameter
- **WHEELS, REAR**: 20" x 1 1/2" semi-pneumatic
- **TIRES, REAR**: 20" x 1 1/2" semi-pneumatic
- **FRONT WHEELS**: 6" x 1 1/2" pneumatic
- **DRIVE BELT**: 21" x 3/8" x 2 1/4" Shafterproof Airlift
- **BLADE**: 21" x 3/8" x 2 1/4" Shafterproof Airlift
- **ENGINE**: 4 hp Briggs & Stratton
- **SELF-PROPELLING UNIT**: Sarlo Model 3100

### MODEL 420SP SPECIFICATIONS
- **CUTTING SWAITH**: 21" diameter
- **WHEELS, REAR**: 20" x 1 1/2" semi-pneumatic
- **TIRES, REAR**: 20" x 1 1/2" semi-pneumatic
- **FRONT WHEELS**: 6" x 1 1/2" pneumatic
- **DRIVE BELT**: 21" x 3/8" x 2 1/4" Shafterproof Airlift
- **BLADE**: 21" x 3/8" x 2 1/4" Shafterproof Airlift
- **ENGINE**: 4 hp Briggs & Stratton
- **SELF-PROPELLING UNIT**: Sarlo Model 3100

### MODEL 624 SPECIFICATIONS
- **CUTTING SWAITH**: 24" diameter
- **WHEELS, REAR**: 20" x 1 1/2" semi-pneumatic
- **TIRES, REAR**: 20" x 1 1/2" semi-pneumatic
- **FRONT WHEELS**: 7" x 1 1/2" pneumatic
- **DRIVE BELT**: 24" x 3/8" x 2 1/4" Shafterproof Airlift
- **BLADE**: 24" x 3/8" x 2 1/4" Shafterproof Airlift
- **ENGINE**: 5 hp Briggs & Stratton
- **SELF-PROPELLING UNIT**: Sarlo Model 3100

### MODEL 624SP SPECIFICATIONS
- **CUTTING SWAITH**: 24" diameter
- **WHEELS, REAR**: 20" x 1 1/2" semi-pneumatic
- **TIRES, REAR**: 20" x 1 1/2" semi-pneumatic
- **FRONT WHEELS**: 7" x 1 1/2" pneumatic
- **DRIVE BELT**: 24" x 3/8" x 2 1/4" Shafterproof Airlift
- **BLADE**: 24" x 3/8" x 2 1/4" Shafterproof Airlift
- **ENGINE**: 5 hp Briggs & Stratton
- **SELF-PROPELLING UNIT**: Sarlo Model 3100

### MODEL 524SP SPECIFICATIONS
- **CUTTING SWAITH**: 24" diameter
- **WHEELS, REAR**: 20" x 1 1/2" semi-pneumatic
- **TIRES, REAR**: 20" x 1 1/2" semi-pneumatic
- **FRONT WHEELS**: 7" x 1 1/2" pneumatic
- **DRIVE BELT**: 24" x 3/8" x 2 1/4" Shafterproof Airlift
- **BLADE**: 24" x 3/8" x 2 1/4" Shafterproof Airlift
- **ENGINE**: 5 hp Briggs & Stratton
- **SELF-PROPELLING UNIT**: Sarlo Model 3100

### MODEL 800A SPECIFICATIONS
- **CUTTING SWAITH**: 26" diameter
- **WHEELS, REAR**: 20" x 1 1/2" semi-pneumatic
- **TIRES, REAR**: 20" x 1 1/2" semi-pneumatic
- **FRONT WHEELS**: 7" x 1 1/2" pneumatic
- **DRIVE BELT**: 26" x 3/8" x 2 1/4" Shafterproof Airlift
- **BLADE**: 26" x 3/8" x 2 1/4" Shafterproof Airlift
- **ENGINE**: 8 hp Briggs & Stratton
Withhold - $a_2, b_3 + b_4$
June 30, 1982

Sarlo Power Mowers have been manufactured from the same basic design for 47 years. In that time there have only been two accident cases filed against us. Both of which are still pending.

I certify that Sarlo Power Mowers Inc. in 47 years has had only two accident cases filed against them and that the above is a true and correct statement.

Arnold L. Sarlo
President
Sarlo Power Mowers, Inc.