



United States
CONSUMER PRODUCT SAFETY COMMISSION
Washington, D.C. 20207

MEMORANDUM

DATE: March 5, 1997

TO : The Commission
Sadye E. Dunn, Secretary

Through: Pamela Gilbert, Executive Director PG

FROM : Eric A. Rubel, General Counsel *ER*
Stephen Lemberg, Assistant General Counsel *SL*
Allen F. Brauningner, Attorney, OGC *AB*

SUBJECT: Draft letter of denial - petition HP 95-1 requesting development of a rule to require youth batting helmets to be manufactured with a face guard

BALLOT VOTE due: MAR 13 1997

On January 17, 1997, the Commission voted unanimously to deny petition HP 95-1, which requested development of a rule to require batting helmets intended for children 15 years of age and younger to be manufactured with a face guard. Attached is a draft letter of denial which sets forth the Commission's decision and explains the facts and policy considerations relied on by the Commission in reaching the decision to deny the petition.

This draft has been reviewed and approved in accordance with procedures implementing section 6(b)(6) of the Consumer Product Safety Act to assure that all information about the safety of consumer products is accurate and not misleading.

Please indicate your vote on the following options.

I Approve the draft letter of denial without change.

Signature

Date

NOTE: This document has not been reviewed or accepted by the Commission.
Initial ER Date 3/5/97

CPSA 6 (b)(7) Cleared

No Mfrs/Prvtlbrs or Products Identified 3/5/97

II Approve the draft letter of denial with the following changes (please specify):

Signature

Date

III Do not approve the draft letter of denial.

Signature

Date

Thomas W. Rhodes, Esq.
Edward H. Wasmuth, Jr., Esq.
Smith, Gambrell & Russell
Attorneys at Law
Suite 3100, Promenade II
Atlanta, Georgia 30309-3592

Gentlemen:

I am writing to advise you that on January 17, 1997, the Consumer Product Safety Commission voted unanimously to deny petition HP 95-1. The petition was submitted by your client, the American Academy of Facial Plastic and Reconstructive Surgery, and requested issuance of a rule to require all protective batting helmets for children younger than 15 years of age to be manufactured with a face guard that conforms to ASTM Standard F910.

In denying the petition, the Commission also directed the staff to write to the organized youth baseball leagues to urge them to encourage the use of batting helmets with face guards by all of their players when batting or running bases. Additionally, Chairman Ann Brown stated that she intends to meet with officials of those leagues to urge the use of batting helmets with face guards by all of their players.

In its evaluation of the petition, the Commission considered all of the information which your client provided to support the request for rulemaking; comments on the petition by interested persons; a package of written materials prepared by the Commission staff, a copy of which has been provided to you; and information provided by the staff during an oral briefing on January 8, 1997.

To issue the rule requested by the petition, the Commission would be required to find that youth batting helmets without face guards present an "unreasonable risk of injury." Such a determination involves balancing the anticipated benefits of the requested rule, primarily the injuries it could be expected to prevent, against the costs it would impose. This balancing considers not only the monetary costs but also the effects of the rule on the utility and availability of the product subject to the rule. If the anticipated benefits of the rule bear a reasonable relationship to its anticipated costs, the risk of injury which the rule addresses is "unreasonable."

The information available to the Commission indicates that if all batters and base runners in organized youth baseball leagues used a helmet with a face guard during the 1995 season, as many as 4,600 injuries treated in hospital emergency rooms might have been avoided. However, the Commission concluded that the goal of achieving widespread use of batting helmets with face guards by players younger than 15 years of age can be achieved more quickly and efficiently by working cooperatively with the organized youth baseball leagues than through rulemaking. The organized youth baseball leagues establish the rules of play and specify the equipment that must be used. Because of their centralized control of the conditions of play, these leagues may be able to improve safety of play expeditiously by obtaining widespread use of batting helmets with face guards. This approach may achieve an important safety objective without

unnecessary red tape and regulation. And, by working with the leagues, the Commission may have greater opportunities to address other safety-related issues in the future.

The American Amateur Baseball Congress has indicated its willingness to work with the Commission on issues related to safety in baseball. In addition, USA Baseball has invited Dr. Susan Kyle of the Commission's staff to attend meetings of that group's Medical and Safety Advisory Committee. The response of these two groups supports the Commission's view that by working cooperatively with the leagues, the Commission may be able to obtain widespread use of youth baseball helmets with face guards quickly and without mandatory regulation.

Thank you for bringing this important safety issue to the Commission's attention.

Sincerely,

Sadye E. Dunn
Secretary