



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

Record of Commission Action  
Voting by Ballot

Commissioners Voting: Chairman Ann Brown (10/31/94)  
Commissioner Mary Sheila Gall (11/2/94)

ITEM: Federal Register Notice Announcing a 45-Day Extension of the Comment Period on the ANPR for Baby Walkers

DECISION:

The Commission had before it a draft Federal Register notice to implement a previous decision to grant a 45-day extension of the comment period for the advance notice of proposed rulemaking (ANPR) for baby walkers. (Ref: Record of Commission Actions, placed in the record on October 24, 1994) In voting on the Federal Register notice, Commissioner Gall voted to approve the Federal Register notice as drafted while Chairman Brown voted not to publish the Federal Register notice. The Commission being divided, there is, therefore, no decision on publishing the notice.

Commissioner Gall and Chairman Brown filed separate statements concerning their votes in this matter, copies attached.

For the Commission:

A handwritten signature in black ink that reads "Sadye E. Dunn". The signature is written in a cursive, flowing style.

Sadye E. Dunn  
Secretary

Attachments

RCA  
10/31/94



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
WASHINGTON, D.C. 20207-0010

The Chairman  
Ann Brown

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STATEMENT OF CHAIRMAN ANN BROWN  
EXTENSION OF COMMENT PERIOD ON ANPR FOR BABY WALKERS

October 31, 1994

On August 2, 1994, the Commission published in the *Federal Register* an advance notice of proposed rulemaking (ANPR) for baby walkers. In that notice, the Commission provided interested persons a 60 day opportunity to submit comments on the ANPR. That 60 day comment period ended on October 3, 1994.

On October 12, 1994, to accommodate firms who needed more time to submit comments on the ANPR, I voted to grant a 45 day extension of the comment period to November 17, 1994. Currently before me is the *Federal Register* document implementing that decision. However, upon further consultation with the Commission's Office of General Counsel, I have now concluded that section 3(f) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. § 1262(f), does not give the Commission legal authority to provide the public more than 60 days for comment on an ANPR. The Commission recently took this position on both the ANPRs for upholstered furniture and multiple tube mine and shell devices.

Specifically, section 3(f) of the FHSA authorizes the Commission to start a rulemaking proceeding under the FHSA by publishing an ANPR in the *Federal Register* and inviting interested persons to submit comments to the Commission "within such period as the Commission shall specify in the notice (which period shall not be less than 30 days or more than 60 days after the date of publication of the notice.)" (Emphasis added). Since the notice seeking comments on the baby walker ANPR was published in the *Federal Register* on August 2, 1994, the Commission has no discretion formally to extend the comment period beyond October 3, 1994, 60 days after the notice was published. Accordingly, I have voted not to publish a notice in the *Federal Register* extending the comment period beyond the legally permissible 60 day comment period. Thus, any comments on the ANPR submitted after October 3, 1994, must be considered late comments.

As is the Commission's practice, however, it will consider late comments to the extent practicable. In this case, the Commission staff has assured me that it will be practicable to consider comments submitted on or before November 17, 1994. Thus, my decision to vote against implementing a 45-day extension of the comment period will not prejudice any interested persons.

RCA  
11/2/94



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STATEMENT OF COMMISSIONER MARY SHEILA GALL  
ON  
EXTENSION OF COMMENT PERIOD ON ANPR FOR BABY WALKERS

NOVEMBER 2, 1994

Today, I have voted to publish in the Federal Register the document implementing the Commission's unanimous decision of October 12, 1994 extending by forty five days the comment period on the Advanced Notice of Proposed Rulemaking on Baby Walkers. I supported the extension in large part because the Commission staff had promised to share with industry incident information pertaining to baby walkers.

I believed then as I do now that industry's reaction to this information may play an important role in the Commission's decision whether or not to publish a Notice of Proposed Rulemaking at a later date. Unfortunately, this information was not shared until well after the comment period had closed. For this reason alone, the extension should be granted.

Now that the Commission has voted for an extension, the Office of the General Counsel opines that such an extension is not within the Commission's discretion, a position that apparently has been taken in recent correspondence from that office and adopted by the Chairman. Unlike the Chairman, I believe that the Federal Hazardous Substances Act allows the Commission to extend the comment period for the simple reason that such an action is not expressly prohibited by the language of the statute. It seems to me a matter of common sense that if the Commission believes that it needs more information in order to decide a regulatory matter, that it is within the agency's discretion to extend a comment period to do so.

Regrettably, the split vote on this question will have the effect of denying the requests for extending the comment period. I cannot vote with the Chairman and thereby establish as Commission policy the position that such extensions are beyond the Commission's discretion.