



U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

DRAFT Record of Commission Action

(Final Minutes of the Meeting will be posted in 5 days)

Commissioners Voting at Open Decisional Meeting, May 1, 2013

Commissioners Voting: Chairman Inez M. Tenenbaum
 Commissioner Nancy A. Nord
 Commissioner Robert S. Adler

ITEM:

Proposed Rule for Amendments to Regulation on Certificates of Compliance 16 C.F.R. part 1110 (Briefing packages dated December 5, 2012 and March 14, 2013, OS No. 4459)

DECISION:

After introducing the matter, Chairman Tenenbaum called for any motions. Commissioner Adler moved that the Commission adopt amendments in the form of a substitute proposed § 1110 rule. Commissioner Adler summarized the substantive changes to the previous draft rule. Commissioner Nord seconded the motion. The Chairman called for any other motions or amendments.

Commissioner Nord explained that she had a series of amendments to Commissioner Adler's substitute proposed rule. Commissioner Nord moved that the Commission adopt certain additions and changes in the recordkeeping charts in the preamble. Commissioner Adler seconded the motion. The Commission discussed Commissioner Nord's proposed amendment. The Chairman called for a vote on the motion to amend the recordkeeping charts. The Commission voted (2-1) to not adopt the motion. Chairman Tenenbaum and Commissioner Adler voted to not adopt the motion. Commissioner Nord voted to adopt the motion.

Commissioner Nord moved that the Commission adopt amendments to Commissioner Adler's substitute proposed rule at § 1110.5 and in the preamble to clarify when a certificate for products which are subject to a ban must be issued. Commissioner Adler seconded the motion. Commissioner Nord explained her motion. The Commission discussed the proposed amendments. The Chairman called for a vote on the proposed amendments. The Commission voted (2-1) to not adopt the motion. Chairman Tenenbaum and Commissioner Adler voted to not adopt the motion. Commissioner Nord voted to adopt the motion.

Commissioner Adler moved that the Commission insert a request for comment in the preamble of his proposed substitute 1110 rule seeking public comment on Table A in the preamble which identifies products subject to a ban that must be certified. Chairman Tenenbaum seconded the motion. Chairman Tenenbaum called for discussion on the motion. There being none, the Chairman called for a vote on the motion. The Commission voted unanimously (3-0) to adopt the motion.

Commissioner Nord moved that in lieu of Commissioner Adler's changes to § 1110.11(c) in his substitute proposed rule, the Commission adopt the staff's original draft language at § 1110.11(c) regarding documenting testing exceptions on certificates and add a question about this issue in the preamble. Commissioner Adler seconded the motion. The Commission discussed the proposed amendments. The Chairman called for a vote on the amendments. The Commission voted (2-1) to not adopt the motion. Chairman Tenenbaum and Commissioner Adler voted to not adopt the motion. Commissioner Nord voted to adopt the motion.

Commissioner Nord moved that the Commission adopt an amendment to Commissioner Adler's substitute proposed rule at § 1110.17 regarding recordkeeping provisions. Commissioner Adler seconded the motion. The Commission discussed the amendment. The Chairman called for a vote on the amendment. The Commission voted (2-1) to not adopt the motion. Chairman Tenenbaum and Commissioner Adler voted to not adopt the motion. Commissioner Nord voted to adopt the motion.

Commissioner Adler moved that the Commission adopt an amendment to his substitute proposed 1110 rule to include a request for comment about the recordkeeping provision in proposed § 1110.17. Chairman Tenenbaum seconded the motion. Chairman Tenenbaum called for a discussion about the motion. The Commission discussed the issue. The Chairman called for a vote on the motion. The Commission voted unanimously (3-0) to adopt the motion.

Commissioner Nord stated that she intended to move that three additional questions be inserted into the preamble of Commissioner Adler's substitute proposed 1110 rule as requests for comment. Commissioner Nord moved to adopt the first question concerning whether the Commission should create a certification exception for foreign manufacturers in direct-to-consumers sales from a foreign country. Commissioner Adler seconded the motion. The Commission discussed the question. The Chairman called for a vote on the motion. The Commission voted (2-1) to not adopt the motion. Chairman Tenenbaum and Commissioner Adler voted to not adopt the motion. Commissioner Nord voted to adopt the motion.

Commissioner Nord moved to include a second request for comment regarding proposed § 1110.9(c) concerning electronic certificates and ways to make that information available only to the agency, Customs and Border Patrol, distributors, and retailers. Commissioner Adler seconded the motion. The Commission discussed the question. The Chairman called for a vote on the motion. The Commission voted unanimously (3-0) to adopt the motion.

Commissioner Nord moved to include a third request for comment regarding proposed § 1110.11(a)(4) to seek comment on the requirement to list all applicable consumer product safety rules, bans, standards, or regulations on a certificate when one rule subsumes another applicable

consumer product safety rule. Commissioner Adler seconded the motion. The Commission discussed the question. The Chairman called for a vote on the motion. The Commission voted (2-1) to not adopt the motion. Chairman Tenenbaum and Commissioner Adler voted to not adopt the motion. Commissioner Nord voted to adopt the motion.

The Chairman recalled for consideration the original motion introduced by Commissioner Adler that the Commission approve the substitute proposed rule amending § 1110, as amended. The Chairman called for a vote on the amendments. The Commission voted (2-1) to adopt the motion. Chairman Tenenbaum and Commissioner Adler voted to adopt the motion. Commissioner Nord voted to not adopt the motion.

Commissioner Adler moved that the Commission approve the substitute notice of proposed rulemaking (NPR) for publication in the *Federal Register* with the changes to the substitute notice as directed and direct the staff to revise section 7 of the NPR to make any necessary conforming changes so that the Paperwork Reduction Act analysis reflects the changes made to § 1110.17 in the substitute NPR. Chairman Tenenbaum seconded the motion.

Commissioner Adler moved that the Commission approve Commissioner Adler's substitute notice as amended by the amendments made this morning. Chairman Tenenbaum seconded the motion and called for the vote. The Commission voted unanimously (3-0) to approve the motion.

The Chairman recalled for consideration Commissioner Adler's motion that the Commission approve the substitute notice of proposed rulemaking (NPR), as amended, for publication in the *Federal Register* with the changes to the substitute notice as directed and direct the staff to revise § 7 of the NPR and make any necessary conforming changes so that the Paperwork Reduction Act analysis reflects the changes made to § 1110.17 in the substitute NPR. Chairman Tenenbaum called for the vote. The Commission voted unanimously (3-0) to approve the motion.

There being no other business, Chairman Tenenbaum adjourned the meeting at 11:56 a.m.

For the Commission:

Todd A. Stevenson
Secretary