U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

MINUTES OF COMMISSION MEETING
May 1, 2013

Chairman Inez M. Tenenbaum convened the May 1m, 2013, 10:00 a.m., meeting of the U.S. Consumer Product Safety Commission in open session. Commissioners Nancy A. Nord and Robert S. Adler were in attendance. Chairman Tenenbaum made welcoming remarks and summarized the matter.

Decisional Matter: 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)

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. On May 6, 2013, Commissioner Nord exercised her right to change her original vote and voted to not adopt the motion. Therefore, the final Commission vote is recorded as 2-1 to approve the motion. Chairman Tenenbaum and Commissioner Adler voted to adopt the motion. Commissioner Nord voted to not adopt 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.

Commissioner Nord submitted the attached statement and supplemental statement regarding this matter. Chairman Tenenbaum and Commissioner Adler submitted the attached joint statement regarding this matter.

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

For the Commission:

Todd A. Stevenson
Secretary

Attachment: Statement of Commissioner Nord
Joint Statement of Chairman Tenenbaum and Commissioner Adler
Supplemental Statement of Commissioner Nord

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

COMMISSIONER NANCY A. NORD

Statement on the Commission's decision to issue a Notice of Proposed Rulemaking to amend the rule on Certificates of Compliance, 16 C.F.R. part 1110

May 15, 2013

The 2008 Consumer Product Safety Improvement Act (CPSIA)[1] mandated that the agency establish a testing and certification regime for products subject to our safety rules. Our rule on certificates—issued under the Act's unrealistic 90-day deadline[2]—lacked the opportunity for economic analysis or public comment.[3] Now, in proposing to amend that costly rule—16 C.F.R. part 1110—we should base it on the analysis and participation that we could not do or seek before. Despite serious specific reservations, I voted to publish this Notice of Proposed Rulemaking (NPR) to start this conversation with the public.

This rule is costly—part of $424.2 million in annual paperwork costs created by the testing and certification regime—but the basic requirement is Congress's, and we must give effect to it. However, because of the costly nature of these paperwork requirements, we need to assure ourselves that we are imposing the minimum requirements needed to effect the Congressional purpose. I am not convinced that we have met that obligation.

The notion of certificates is not a bad one: The agency can focus on checking certificates rather than products, enhancing our ability to monitor products in the field and products being brought in at the ports, let safe products enter the American marketplace, and focus on unreasonably risky products. But whether certificates actually have created any appreciable safety benefit is an open question. Since some of the burdens in this rule have been borne by product makers and importers since 2008, we now (finally) have the opportunity to get the formal and informed feedback that will help us to improve the rule. It is incumbent upon us to listen carefully to that feedback and act on it.

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[1] Pub. L. 110-314, 122 Stat. 3016 (Aug. 14, 2008).

[2] *Id.* at § 102(a)(1)(B).

[3] *See* Certificates of Compliance, 73 Fed. Reg. 68,328, 68,331 (Nov. 18, 2008) (codified at 16 C.F.R. pt. 1110).

I write now to highlight a few key matters—cost, in particular—that I believe it would be helpful for the public to address. But first, I must explain what led us to adopt the original Part 1110 in 2008.

Part 1110's past & future

When Congress passed the CPSIA in August 2008, it required affected manufacturers and private labelers to issue certificates starting only 90 days later. As we noted in 2008, there was "substantial confusion in the regulated community as to the application and implementation of [the certificate] requirement."[4] Thus, the Commission—which I then led as Acting Chairman—issued a direct final rule to give some initial clarity to the public. Unfortunately, given the "myriad of near[-]term statutory deadlines of various other CPSIA provisions,"[5] and the statutory deadline for *this* requirement, it was impossible to seek comments from the public on the contents of Part 1110 and still meet the statutory deadline. Nor was there time to perform a Paperwork Reduction Act (PRA)[6] analysis. As a result, we did not realize that Part 1110 was the second major rule issued by the agency—out of four total.[7] We now know more.

What we have learned is startling. As detailed below, the paperwork costs covered by Part 1110 and its companion rules are huge—approaching half a billion dollars. *For paperwork. Annually*. And although the agency cannot alter the central certificate requirement, we must implement it sensibly—and we have the authority to do so under CPSIA § 3.

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[4] 73 Fed. Reg. at 68,331.

[5] *Id.*

[6] 44 U.S.C. §§ 3501–21.

[7] Under Executive Order 12,866, 58 Fed. Reg. 51,735 (Oct. 4, 1993), administrative agency rulemaking that would impose a cost of $100 million or more on the economy (among other factors), is considered "significant" and triggers an obligation to perform a thorough regulatory impact analysis that ensures that the rule is tailored to maximize benefits and minimize costs. Though this requirement technically does not apply to the CPSC, we have typically followed it in spirit, and courts would likely look askance at a CPSC rule that lacked any such analysis under the general "arbitrary and capricious standard" of the Administrative Procedure Act, *see* 5 U.S.C. § 706(2)(a), or the "necessary" provision of CPSIA § 3.

One other major rule relates to testing and certification—Part 1107. The other major rules are the mattress flammability standard for open-flame ignition sources, *see* 16 C.F.R. § 1633.8, and the safety standard for full-size and non-full-size baby cribs, *see* 75 Fed. Reg. 81,766, 81,782–786 (Dec. 28, 2010).

Because of the manner in which Part 1110 was promulgated, there is much that we do not know about its effects. But what we do know shows that this rule is having unintended burdens and the safety benefit is questionable so far. Therefore, I proposed several amendments at the Commission's meeting deciding to issue the revision of Part 1110, including three specific new questions for the public (the other amendments are discussed below). My colleagues rejected two out of the three questions (on one-off international sales directly to consumers, and duplicative certifications; they accepted a question on electronic access to certificates).[8] I am at a loss to understand why my colleagues shy away from or fear asking these questions. To effectively implement this rule, we need effective public participation. Asking questions and highlighting concerns is central to that effort. And my concerns run deep.

Certificate requirements

A key concern relates to the certificate requirements, as changed by two questionable modifications adopted by my colleagues to our staff's draft of the NPR.

Certificates for products that are not required to be tested

First, the proposed rule, as amended by my colleagues, requires companies whose products are not required to be tested to nonetheless document non-existent test results and prepare, file (as appropriate), disclose, and maintain certificates based on those non-existent test results. I objected to this because the certificate requirement makes scant sense when a product is not tested.

The statute envisions certificates "based on a test."[9] If a product need not be tested, then, the certificate has no basis. This includes products that fit under Commission determinations that testing is unnecessary.[10] Under staff's original draft NPR, certificates would not have been required for these products (so long as they were not required to test and certify under some other regulation). My colleagues amended staff's draft to require certificates for those products. In light of heavy costs and a lack of obvious necessity, I did not agree.

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[8] My proposed amendments are attached to this statement.

[9] Consumer Product Safety Act § 14(a)(1)(A); *see also id.* § 14(a)(2)(B).

[10] *See* 16 C.F.R. § 1500.91 (determinations that specified products will not contain lead); Third Party Testing for Certain Children's Products; Notice of Requirements for Accreditation of Third Party Conformity Assessment Bodies to Assess Conformity With the Limits on Phthalates in Children's Toys and Child Car Articles, 76 Fed. Reg. 49,286, 49,288 n.2 & accompanying text (Aug. 10, 2011) (materials that will not contain banned phthalates).

Certificates for banned products

Another questionable amendment specifies which products, among those subject to a ban, must be accompanied by a certificate. Under the pre-CPSIA 1972 version of the Consumer Product Safety Act (CPSA), certificates were only required for products subject to a consumer product safety standard under the CPSA, and were not required for obligations imposed by other statutes we enforce.[11] Importantly, bans were not included. Under the CPSIA, bans are included in a larger list.[12] Read too broadly, requiring something to certify that it is not banned could lead to absurd results: *All* products under our jurisdiction could be required to certify that they are not banned under *any* relevant provision. (For example, a cotton baby blanket might have to bear a certificate that it is not a banned lawn dart, an unstable refuse bin, or butyl nitrite sold for the purpose of inducing euphoria.) Congress left it to us to implement this requirement reasonably, again under § 3 of the CPSIA.

There are at least three good readings of the how the certificate requirement should apply to bans. First, one reasonably could argue a banned product does not legally exist so there is nothing to certify to or that the product is outside the scope of any ban (and thus beyond the reach of the certificate requirement as relates to that ban). This leaves nothing of bans to be certified, but it could be argued that the law is not sufficiently clear to overcome that result. A second interpretation would apply the certificate requirement to products regulated under the Federal Hazardous Substances Act, which only permits the agency to regulate by banning a covered substance.

The third approach is the one our staff suggested. They reasoned thusly: Some bans forbid an entire product category, leaving nothing to be certified. Other bans forbid only part of a product category, leaving the remainder susceptible to certification. (In particular, when a product is subject to a specific test, it is easier to identify the products to be tested, and those that could pass the test would have to certify to the ban.) One colleague proposed articulating this principle in the preamble—along with a chart showing staff's assessment of how it would be applied. Including the chart and language was a move in the right direction, but not far enough. The principle should be adopted in the rule, not just in the preamble, where it would likely escape the public's

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[11] *See* CPSA, Pub. L. 92-573, § 14(a)(1), 86 Stat. 1207, 1220 (1972) ("Every manufacturer of a product which is subject to a consumer product safety standard under this chapter and which is distributed in commerce (and the private labeler of such product if it bears a private label) shall issue a certificate which shall certify that such product conforms to all applicable consumer product safety standards, and shall specify any standard which is applicable."), *amended by* CPSIA § 102(a)(1)(A) (2008).

[12] CPSA § 14(a)(1).

notice (preambles are not published in the Code of Federal Regulations, the compendium of most generally-applicable, permanent federal regulations).

Because the certificate requirement is backed by civil and criminal penalties, we have a constitutional, due process obligation to draw lines clearly. Following these principles, I proposed–and my colleagues rejected—language *in the rule* to clarify (not expand) our staff's analysis and proposed application of the certification requirement to bans. The particular language is less important to me than the principle that we should signal our intentions. The government must cut square corners when penalties loom.

Recordkeeping

One colleague's amendment to the staff's proposal addressed the rule's recordkeeping requirements. He sought to "harmonize" the recordkeeping requirements of General Conformity Certificates, or GCCs, with those of children's products (in Parts 1107 and 1109), the records of which must be kept for five years. In its draft, however, staff recommended applying the recordkeeping requirements of a GCC's applicable standard, and recommending three years of recordkeeping if the applicable standard lacked its own recordkeeping provision.

I could not object to our staff's provision. I did object to my colleague's and his rationale, however. Harmonization is a specious point here because the agency should require record retention as necessary to execute a regulation. Where the Commission has previously established detailed recordkeeping requirements based on the specific product being regulated and the risk being addressed, revising past Commission decisions in one subject-blind fell swoop—and the careful analysis they reflect—seems short-sighted and likely to produce inconsistency and confusion. As our staff's draft shows, there was no need to upset former Commission's decisions with respect to specific recordkeeping. As a mantra here, *harmonization* is unconvincing.

Costs

In the end, each unnecessary certificate that makes the consumer no safer is a wasted cost. Each of these topics that we let pass without seeking public input is a missed opportunity to find ways to reduce costs. And the enormous costs of this revised rule demand a fair evaluation by us and the public—the very function an NPR would have served if we had used it properly.

As required by the Paperwork Reduction Act (PRA), the proposal includes our staff's analysis of the estimated costs of Part 1110, as we propose to amend it: $192.9 million in

paperwork costs *annually*.[13] Add to this the estimated annual paperwork costs of Parts 1107 and 1109, and the total is a staggering $424.2 million *every year*. (Importantly, the full paperwork cost of Parts 1107 and 1109 could not be known until now because some elements were not calculated until now.) This cost estimate includes documenting test results, creating certificates, disclosing them to third parties (such as retailers and distributors), and (for importers) filing them with U.S. Customs and Border Patrol.

Requirements	GCCs	CPCs
Document test results	$118 million[14]	$216.4 million[15]
Create certificate		
Disclose certificate		$ 14.9 million[16]
File certificate with CBP	$56 million[17]	$18.7 million[18]
Subtotal	$174.2 million	$250 million
Total	$424.2 million	

This enormous yearly cost is likely only a fraction of the cost of the entire testing scheme, and readers should remember that it is purely for paperwork: No testing is included in this half-billion dollar annual payment.

I believe we owe the public a full accounting, which is why I proposed amending the preamble of this package to include this estimate. My colleagues do not agree. They argue that including it in the package is neither necessary nor typical agency practice,

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[13] As shown by the table here and in our staff's PRA analysis, the $192.9 million figure comes from adding all of the GCC costs (the documentation, creation, and disclosure requirements, plus the CBP filing requirement, which amounts to $174.2 million) to the CBP filing requirement as it applies to CPCs ($18.7 million).

[14] 78 Fed. Reg. at 28,092–106.

[15] Testing and Labeling Pertaining to Product Certification, 76 Fed. Reg. 69,482, 69,537–40 (Nov. 8, 2011) (codified at 16 C.F.R. pt. 1107); Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and Certification Requirements, 76 Fed. Reg. 69,546, 69,578–80 (Nov. 8, 2011) (codified at 16 C.F.R. pt. 1109).

[16] 78 Fed. Reg. at 28,092–106.

[17] *Id.*

[18] *Id.*

and suggest I am merely making a political point. With respect, I believe they are incorrect.

In developing PRA analyses, agencies must evaluate the need to require the paperwork, specifically and objectively estimate the burden, and work with the public to reduce that burden.[19] For our stakeholders to properly understand what the full burden reported of this Part 1110 revision is, they should understand how it fits in with the burdens of its companion regulations, Parts 1107 and 1109.[20] Presenting this reality to the public is no more "political" than calculating the costs themselves—it is a matter of regulatory openness and clarity.

Moreover, separating these costs is a legal fiction—they are costs that will be incurred in complying with our certification recordkeeping. Those impacted by this rule cannot "separate" them or pay only portions but instead must incur them wholesale. We should tell them with that price tag is.

There is no good reason for refusing to put these totals up front other than seeking to minimize their appearance by forcing a reader to jump through multiple documents to tabulate the total. Further, the total itself is concerning to me, particularly because it represents so minuscule a portion of the overall cost associated with these rules. Even if the public is willing to bear that cost, we owe them a full explanation of it.

Other issues

Beyond the subjects of my amendments, there are a number of other very significant issues in this proposed rule that will change the way in which certificates are created and managed. For example, do we need and should we ask for the identity of the product manufacturer when this is often sensitive business information? Are the other pieces of information requested reasonable for carrying out our regulatory responsibilities?

This rule makes important changes with respect to requirements for electronic filing of certificates. Further it imposes certificate responsibilities on common carriers who act as "importers of record." It also states that for foreign manufacturers who sell directly to consumers (for their own use and not for resale), the foreign manufacturer is responsible for certifying compliance. The rationale is that we cannot require the consumer to certify and someone needs to. This seems to me to be a totally unenforceable requirement and

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[19] *See* 44 U.S.C. § 3506(c).

[20] *See* White House Office of Management & Budget, Circular A-4, 15–16 (Sep. 17, 2003) (explaining the need to measure costs against a baseline of the existing statutory and regulatory landscape).

fits into the notion that "regulators abhor a regulatory vacuum." There are no doubt many other issues that are raised by this proposed rule and should be addressed.

Conclusion

Part 1110 was issued in haste due to statutory requirements. The regulated community has dealt with it for several years and has substantial practical experience with it. Their advice is indispensable as we begin to fix it. And more than anything else, it was necessary to start that process. I have serious concerns about this rule, particularly as amended by my colleagues and without important questions that I believe we should have highlighted. Hopefully I have done so here. It is now up to the public to let us have the benefit of the wisdom that experience brings.

CONN Amendments to §1110 NPR

1. Insert the following chart into preamble PRA analysis section combining all recordkeeping costs.

Table D-1: Total PRA Burden Estimates for Certificates Limited to This Analysis—Both GCCs and CPCs—Under 16 CFR 1107 and 16 CFR 1110 as Proposed, Including the Requirement on Importers to File Certificates with CBP

Estimated Average Total Annual Cost of Preparing GCCs and CPCs and, as Applicable, Filing Certificates for Imports with CBP	$207,802,724

Table D-2: Total PRA Burden Estimates for Documenting Information for, Creating, Disclosing, and CBP Filing of Certificates Under 16 CFR 1107 and 1109, and 16 CFR 1110 as Proposed

Requirements	GCCs	CPCs
Document test results	$118 million[1]	$216.4 million[2]
Create certificate		
Disclose certificate		$ 14.9 million[3]
File certificate with CBP	$56 million[4]	$18.7 million[5]
Subtotal	$174.2 million	$250 million
Total	$424.2 million	

2.

a. In the draft rule at §1110.5, insert *(a)* in front of the current rule text and insert the following as a subsequent subparagraph:
(b). Certificates are required for products which are subject to a ban when the banned characteristics defined by the language of the ban do not define the whole product category within which the banned products fall and the products are not specifically excluded from the ban.

[1] § 1110 PRA (March 2013)

[2] §§ 1107 & 1109 PRAs (November 2011)

[3] § 1110 PRA (March 2013)

[4] § 1110 PRA (March 2013)

[5] § 1110 PRA (March 2013)

b. In the preamble, delete the following language on page 11:
For example, the Commission's ban on non-children's lawn darts at 16 CFR 1306.1 et seq. states that "any lawn dart is a banned hazardous product." This appears to ban the entire product category, yet the Commission is aware that certain manufacturers continue to sell products advertised as plastic-tipped lawn darts. These lawn darts appear not to present the hazard of death or injury that metal-tipped lawn darts do. In such a case, the Commission expects such manufacturers to issue GCCs that certify that the plastic-tipped lawn darts do not fit within the class of banned lawn darts.

c. Insert the following language as a request for comment at the appropriate location:
The Commission has proposed language at §1110.5 that identifies the products subject to a ban that would be required to provide certificates under this rule. A chart in Section II.C of this preamble provides the agency staff's initial assessment identifying which banning rules apply to products that would still require a certificate. The Commission seeks comments regarding whether the language the Commission proposes to adopt is sufficiently clear and whether a certificate is required as it applies to the particular products and bans concerned.

3.

a. Adopt staff's draft language at §1110.11(c) regarding certificate requirements and the absence of such a requirement for products that are not required to be tested or certified.

b. Insert the following language as a question for the record at the appropriate location in the preamble.
Section 14 requires that certificates be issued on the basis of testing. We have determined that certain products always meet the underlying requirements and so are not required to be subjected to third-party testing. For example, we determined that a number of products, including cotton, do not contain lead (see 16 CFR 1500.91(d)(7)(i)); thus, cotton children's products need not be tested to prove the absence of lead. We seek comments on whether certificates should be issued for products that are exempt from testing requirements. Noting that the products that are the subject of such exemptions and determinations still must comply with the underlying statutes and rules, we ask whether requiring certificates would aid or hinder compliance, expeditious import processing, or whether they would prove a benefit or hindrance in any other manner.

4. Replace the second and third sentences in §1110.17 with the following sentences:
For GCCs, the certificate and supporting test records shall be maintained based on recordkeeping provisions within the applicable substantive standard. If a standard does not contain a recordkeeping requirement, the issuer shall maintain certificates and test records for at least 5 years.

Requests for comment

5. Insert the following as a request for comment:
   Under proposed § 1110.7(a), a foreign manufacturer could become an importer and be required to make a certificate. Concerning direct-to-consumer sales, should the CPSC consider an exception for certificates for items purchased by consumers, from foreign manufacturers or sellers, for their individual use and not for resale or wider distribution?
6. Insert the following as a request for comment:
   Proposed § 1110.10(c) states that an electronic certificate can meet the requirements of the relevant provisions if it is identified prominently by a unique identifier and can be accessed via a World Wide Web uniform resource locator (URL) or other electronic means by the Commission (and others) without password protection. The Commission seeks comments on ways to make that information available only to the agency, CBP, distributors, and retailers.
7. Insert the following as a request for comment:
   Proposed § 1110.11(a)(4) requires a certifier to list each consumer product safety rule—or similar rule, ban, standard, or regulation under any law enforced by the Commission—to which the finished product is being certified. May the Commission deem certification to an applicable consumer product safety rule, ban, standard, or regulation that subsumes another applicable consumer rule, ban, standard, or regulation sufficient certification for both rules, bans, standards, or regulations?

U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
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JOINT STATEMENT OF CHAIRMAN INEZ TENENBAUM AND COMMISSIONER ROBERT ADLER ON THE NOTICE OF PROPOSED RULEMAKING REGARDING CERTIFICATES OF COMPLIANCE, 16 C.F.R. PART 1110

June 6, 2013

On May 1, 2013, the Consumer Product Safety Commission voted to publish a Notice of Proposed Rulemaking (NPR) regarding certificates of compliance, which are required under section 14 of the Consumer Product Safety Act (CPSA).[1] Certificates of compliance are simply documents issued by manufacturers that accompany their products as they move in commerce to attest that the products have been tested and found compliant with CPSC safety rules.[2]

The issue before the Commission was a relatively minor amendment to our existing certification rule, which was issued in 2008 and is referred to as the "1110" rule.[3] The 1110 rule, as originally written, set forth the agency's general policy regarding product certification. Based on this rule, firms have been required to issue certificates of compliance for the past four-plus years.

With respect to the current vote to amend 1110, the Commission wanted, among other things, to implement section 14(g) of the CPSA, which authorizes the Commission to require the electronic filing of certificates of imported products before their arrival at a

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[1] 15 U.S.C. §§2051-2089. Section 14 was amended in 2008 by the Consumer Product Safety Improvement Act (CPSIA) to extend the requirement for certification to include "every manufacturer of a product which is subject to a consumer product safety rule under the [CPSA] or similar rule, ban, standard, or regulation under any other Act enforced by the Commission."

[2] Different tests for product certification apply to different products. Certificates for children's products must be based on testing by third party laboratories, and are known as Children's Product Certificates (CPC). Certificates for non-children's products need not be tested by third party labs, but must be issued based on tests of each product or according to a "reasonable testing program." Non-children's product certificates are known as General Conformity Certificates (GCC).

[3] 16 CFR Part 1110 (2008).

U.S. port. In addition, because the Commission had not undertaken a Paperwork Reduction Act (PRA) analysis for the original 1110 rule in 2008, the agency included this analysis along with the PRA for the amended rule.[4]

Although we considered the agency staff's draft 1110 NPR to be generally excellent, we proposed several changes to clarify the NPR and to incorporate several policy concerns that we had. Specifically, we proposed the following amendments:

- Clarify Which Bans Require Certificates: One could argue that section 14(a) requires GCCs for all banned products, but staff pointed out that some bans remove all products from the category addressed by our rules, so there would be nothing to certify. Other bans, however, operate more like standards and permit some products in a regulated category to be sold.[5] To address possible confusion regarding which bans require certificates and which do not, we proposed to add a table developed by agency staff that listed CPSC bans and identified which required certificates.

- Certificates for Products Excluded From Testing: Staff's original draft NPR required products subject to multiple rules to certify compliance with all applicable rules, including those rules for which the products had been excluded from CPSC testing requirements. This left products subject to testing to one rule only—but exempt for whatever reason—not required to certify their exempt status. We found this perplexing since the same concerns about compliance apply irrespective of whether a product is subject to one rule or many. That is, inspectors who saw products subject to CPSC rules without markings would be unable to tell whether the products fell within a testing exclusion or were simply violative. Accordingly, we proposed to extend certification requirements to all products subject to CPSC rules, whether excluded from testing or not.

- Harmonized Recordkeeping for CPCs and GCCs: To harmonize the requirements for keeping test records between Children's Product Certificates (CPCs) and General Conformity Certificates (GCCs), we proposed to require record retention for GCCs to match that of CPCs.

[4] Our colleague, Commissioner Nord, who was Acting Chairman in 2008, writes that the press of events prevented the Commission from doing the PRA at the time or from seeking public comment.
[5] For example, only certain slant-sided refuse bins are banned from the market while others may continue to be sold. See 16 CFR 1301.

- Tables for PRA Analyses: To provide clarity regarding the PRA analyses conducted by staff, we proposed to provide tables that detailed the "old" costs associated with the original 1110 rule promulgated in 2008 and two separate PRA tables that identified the "new" costs in 2013 associated with electronic filing of certificates with Customs and Border Protection (CBP) for CPCs and GCCs. (We also included a table that identified the "old" costs required in Part 1107 associated with third party disclosure of CPCs to retailers, distributors, or the CPSC.)

- Replacement Parts Can be "Finished" Products: To clarify that "replacement" parts could be considered "finished" products, we proposed clarifying language for the term "finished" product.

Our colleague, Commissioner Nord also proposed several amendments, some of which we concurred in and others of which we opposed. She later issued a statement explaining her amendments and voicing objections to some of our amendments. Having read her statement carefully, we feel a need to explain in greater detail the rationale for our amendments and why we did not agree with her objections.

Table of Certificate Requirements for Banned Products

Although Commissioner Nord apparently approves the idea of including a table that identifies which bans require certificates and which do not, she criticized our rejection of her proposed language to clarify the Commission's approach. Unfortunately, she misstates the nature of our disagreement, so, reluctantly, we must explain the point.

What happened to our colleague's proposal was the failure of a somewhat lengthy negotiation, which included several parts. Our colleague suggested specific language setting forth a statement of principle that distinguished between those banned products that would require certificates and those that would not. She also proposed to include her language in the rule in addition to its placement in the preamble. Although we had misgivings regarding her proposal, we responded, in the spirit of compromise, that we would agree to it so long as staff had the opportunity to apply her statement of principle to the staff's proposed table—and that all would abide by staff's assessment of the impact of her language on the table. Without agreeing to make such corresponding changes to the table, we could see no basis for accepting her language since the point of the table was to clarify the Commission's approach and provide direction to industry. If the Commissioners and staff failed to agree on how to interpret her statement of principle, we

would have reached a deal in the abstract only—not at all useful in providing clarity and guidance.

Unfortunately, when staff applied Commissioner Nord's statement of principle to the table, she rejected their interpretation and insisted on sticking to the table's original version. Whether the Commission should include some statement of principle about bans and certification in the rule as well as in the preamble, we maintain an open mind. What we did not agree to is adding Commissioner Nord's statement of principle in the rule text without her willingness to make changes to the table in the preamble that reflects the application of her statement of principle.

We believe that both sides negotiated in good faith and at length. Unfortunately, despite our best efforts, the two sides could not get to yes.

Certificates for Products Excluded From Testing

Our colleague criticizes our amendment to 1110 that requires certifiers to list all product testing exclusions on their certificates whether or not the products are subject to one rule or multiple rules. As she states, certificates are based on a test. If there is no test, she asks why there is a need to certify that no testing of a product has occurred. Fortunately, the answer is contained in her own statement where she describes the benefits of certification:

> The notion of certificates is not a bad one: The agency can focus on checking certificates rather than products, enhancing our ability to monitor products in the field and products being brought in at the ports, let safe products enter the American marketplace, and focus on unreasonably risky products.

As our colleague correctly notes, the advantage of certificates is that the agency can check a certificate rather than test the product. Thus, the point of requiring a certificate is to alert CPSC staff in the field and CBP inspectors at the ports that a product that clearly falls within the scope of a Commission rule is not violative. Absent a certificate, the enforcement staff would have no idea whether a product's manufacturer has taken proper steps to ensure that its product fits within a CPSC exclusion or whether the manufacturer is simply a scofflaw. Without such information, staff might have to place a hold on the product's distribution until they have satisfied themselves that the product presented no hazard. Unfortunately, stopping a product's distribution imposes costs on manufacturers, consumers, and enforcement staff, which can be avoided if a certificate provides proof of a product's compliance with CPSC rules.

The principle here is the same as the one that leads Transportation Security Administration (TSA) staff to insist that all air travelers go through TSA's screening procedures. If one applied Commissioner Nord's logic, one would ask why perfectly innocent passengers should have to endure security checks. Only terrorists or heavily armed travelers should have to be screened. Of course, the answer is that agents do not know the difference until they have done the screening and established that no security threat exists. Similarly, CPSC enforcement staff will not be able to make a judgment about products covered by safety rules until they see some clear evidence, *i.e.*, a certificate, that the products comply with or are excluded from testing under CPSC rules.

Cost Calculations

Perhaps the greatest disagreement that we have with our colleague's statement is her insistence that the Commission include a table showing that the total cost of GCCs and CPCs is "a staggering $424.2 million every year." To say that her math is misleading and unfair is an understatement. In fact, the correct number is roughly 20 percent of hers—about $75 million—spread among tens of thousands of firms. Her "staggering" number is clearly designed to score political points and to frighten the regulated community into thinking that the Commission has just unloaded enormous new costs on them. That, of course, is completely untrue.

Frankly, Commissioner Nord adds apples and oranges and then calls everything an apple when she cites this number. Unfortunately, the problem traces back to 2008 when Commissioner Nord was Acting Chair of the agency. Had she directed staff back then to undertake a Paperwork Reduction Act (PRA) analysis of the original 1110 rule, we would not have needed to do such an analysis this year—four and a half years after it should have been done. These costs would have been accounted for, and they would not have been included in the current proposed revision to the rule.

In fact, as our colleague well knows, the Paperwork Reduction Act was never intended to require or provide a running tally of regulatory costs. It requires agencies that impose new paperwork costs to estimate what those costs will be.

That said, we have sought to rectify the situation. But, we need to distinguish the costs associated with the original version of the rule—which have been incurred by industry for the past four and a half years—from the new costs associated with the relatively minor changes made in this revised rule.

So, to properly account for the old versus new costs, we proposed four tables, as follows:

Old Costs

> **Table B-1**: Summary of PRA Burden Estimates by Rule for Non-Children's Products that Require a General Conformity Certificate (GCC) Attributable to Existing 16 CFR 1110 (November 2008) Requirements = $56,000,000
>
> **Table C-1**: Summary of PRA Burden Estimates for Third Party Disclosure of Children's Product Certificates (CPCs) Attributable to Existing 16 CFR 1107 (November 2011) Requirements = $14,936,000

New Costs

> **Table B-2**: Summary of PRA Burden Estimates for Non-Children's Products that Require a General Conformity Certificate (GCC) to be Filed with CBP for Import Attributable to the Proposed Amendment to Existing 16 CFR 1110 (March 2013) Requirements = $56,000,000
>
> **Table C-2**: PRA Burden Estimates for Children's Products that Require a CPC to be Filed with CBP for Import Attributable to the Proposed Amendment to Existing 16 CFR 1110 (March 2013) Requirements = $18,700,000.

Commissioner Nord advocates lumping these costs together because "[f]or our stakeholders to properly understand what the full burden … of this Part 1110 revision is, they should understand how it fits in with the burdens of its companion regulations, Parts 1107 and 1109." To say the least, this explanation is disingenuous. If ever there were a group that "properly understood" the costs to which she refers, it would be regulated industry since they have actually incurred the costs of Parts 1107, 1109 and 1110 for the past several years. Commissioner Nord's certification math provides no new information whatsoever to them.[6]

Aside from her unconvincing attempts to pump up the PRA certification costs of our 1110 amendments, Commissioner Nord's approach strikes us as particularly troubling on two additional grounds. First, to those not sophisticated in CPSC matters, her number

[6] Given her "let's throw in the kitchen sink" logic, we're surprised that she did not insist on adding in to the PRA the ongoing certification costs for CPSC's 37-year old swimming pool slide standard or the certification costs for our 34-year old lawn mower standard, or those for the many other long-existing Commission standards. Moreover, if she were so concerned about ensuring that our stakeholders knew about the burdens of our regulation, one puzzles at her silence for the past four years regarding the need for a PRA —or, for that matter, the need for public comments on 1110.

might confuse them into thinking that the Commission was about to impose hundreds of millions in new regulatory costs, which we are not. Second, she ignores the fact that the costs associated with these rules will be spread among tens of thousands of manufacturers, private labelers, and importers, meaning that the added costs will be minimal for any individual company.

Recordkeeping Harmonization for CPCs and GCCs

Commissioner Nord criticizes our harmonizing the recordkeeping requirements of General Conformity Certificates (GCCs) with those of Children's Products (CPCs) by paying homage to recordkeeping requirements established by the Commission in years past. She states, without any supporting evidence or data, that the "careful analysis" in the past deserves great deference.[7] Absent any reason other than her general reverence for the past for creating two separate regulatory schemes, we find it hard to impose such inconsistent approaches to recordkeeping.

What prompted our current amendment to conform the time frames for recordkeeping was our desire to avoid confusion and provide consistency for those who have to keep both CPCs and GCCs. In the Commission's 1107 rule, the agency established a recordkeeping requirement of five years for CPCs to be consistent with the five year statute of limitations that we must abide by for assessing civil penalties.[8] It would make no sense to have a different rule for GCCs.

Moreover, the added costs of this rule change should be extremely small. Because section 14(a) requires firms to subject their products to a "reasonable testing program" in order to issue GCCs, the only costs associated with this requirement are retaining the records of companies' tests—rather than disposing of them. And given that virtually all records will be digitized, the costs of retaining them for five years are likely to be counted in pennies, or fractions thereof.

Other Concerns

Commissioner Nord raises a number of other concerns about the 1110 rule that boil down to what we consider her main objection to the certification rule. As with almost

[7] As one who worked at the Commission back then, Commissioner Adler can say that the amount of thought attributable to the time frame for maintaining certification records was minimal. In fact, once the Commission first established a time period for certification records to be kept, subsequent Commissions simply copied the time frames into later standards.

[8] 16 CFR Part 1107.26(b).

everything associated with the additional authority and resources granted to the Commission in 2008 by the Consumer Product Safety Improvement Act (CPSIA), she manages to find fault. She has voted against and voiced disapproval of most, if not all, of the Act's provisions related to testing and certification, insisting that the costs associated with these measures cannot be justified. Her current dissent thus hardly comes as a surprise.

Although we believe that the final returns are not in that would justify every word of the CPSIA, we understand that this act was approved overwhelmingly by Congress in 2008 and basically affirmed with minor adjustments by even larger majorities in 2011. We regret our colleague's ongoing battle with this strong and clear legislative mandate even now, five years after its enactment.

All of this said, we look forward to receiving public comments on the proposed amendments to the 1110 rule in the months ahead.

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

COMMISSIONER NANCY A. NORD

Supplemental statement on the Commission's decision to issue a Notice of Proposed Rulemaking to amend the rule on Certificates of Compliance, 16 C.F.R. part 1110

June 11, 2013

The Consumer Product Safety Commission recently issued a long-awaited Notice of Proposed Rulemaking to revise 16 C.F.R. part 1110—the rule describing the agency's requirements for congressionally-mandated certificates of compliance.[1] This rule is part of what I will call the CPSC's testing and certification triad.[2] I wrote a statement explaining why I voted to issue the NPR to revise Part 1110,[3] and my colleagues have now issued a joint statement, which (in part) responds to my statement.[4] In general, our statements stand for themselves and I will not respond to every element of their statement that I do not agree with. A few points, however, need clarification. First, getting public input is always important, and is something I consistently seek, including

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[1] Consumer Product Safety Act § 14(a), 15 U.S.C. § 2063(a), *as amended by* Consumer Product Safety Improvement Act § 102(a), Pub. L. 110–314, 122 Stat. 3016, 3022 (Aug. 14, 2008).

[2] The triad represents the agency's approach to ensuring safety through the testing and certification of children's (and other) products. The other elements of the triad are 16 C.F.R. part 1107, which addresses testing and certification requirements for children's products, and 16 C.F.R. part 1109, which establishes complementary requirements for components of those products.

[3] Nancy Nord, *Statement on the Commission's decision to issue a Notice of Proposed Rulemaking to amend the rule on Certificates of Compliance, 16 C.F.R. part 1110* (May 15, 2013), http://www.cpsc.gov//Global/About-CPSC/Nord/Nord1110Amendment.pdf.

[4] Inez Tenenbaum & Robert Adler, *Joint Statement on the Notice of Proposed Rulemaking Regarding Certificates of Compliance, 16 C.F.R. Part 1110* (June 6, 2013), http://www.cpsc.gov//Global/About-CPSC/Joint-Statements/TenenbaumAdler1110Rule.pdf. I adhere to my oft-expressed belief that past Commission practice—and collegiality and decorum—held that Commissioners should use their statements to state their own positive rationales for their votes, rather than respond directly to their colleagues' stated rationales in written statements. *See, e.g.*, Nancy Nord, *Supplemental statement on the Commission's decision to provisionally accept a civil penalty with Williams-Sonoma, Inc.* (May 13, 2013), http://www.cpsc.gov//Global/About-CPSC/Commissioners/Nord/NordWilliamsSonomaSupplemental.pdf; Nancy Nord, *Supplemental statement on the vote to approve the Notice of Requirements for the toy standard, ASTM F-963* (July 29, 2011), http://www.cpsc.gov/PageFiles/120775/nord07292011.pdf.

with respect to this rule and its proposed amendment. Second, the importance of this input is illustrated dramatically by the cost estimates for this rule, particularly when viewed in light of the rules that this NPR is related to. Finally, I must respond to my colleagues' assertions about my motivations with respect to how I approached this and other rules promulgated under the Consumer Product Safety Improvement Act of 2008.

To the extent that my colleagues suggest that I have sat silently concerning the need for public comment on Part 1110, they are simply incorrect. I have repeatedly pushed the agency's leadership and our staff to move forward on Part 1110 in order to get public input, as my colleagues surely know. They are also surely aware that it is my practice to seek public comment on important matters, and to insist on debating matters openly, not behind closed doors.[5] With respect to the original promulgation of Part 1110, my description of the heavy press of work that preceded and followed the Notice of Rulemaking stands.[6] What we could not do then, we can and are doing now, which is as it should be.

Additionally, when it comes to stating the overall, annual paperwork cost calculation of $424.2 million, I believe it is important to point out where we agree, where we should agree, and where we disagree.

1. We all agree that our staff estimated the total annual paperwork cost added by the changes in Part 1110 proposed in this NPR to be $74.8 million a year.[7]
2. None of us disputes our staff's estimates of the annual paperwork burden created by Parts 1107 and 1109, and included in the PRA analyses for their respective *Federal Register* notices, which total about $216.4 million per year.[8]

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[5] For example, in the Commission's decision to revoke its definition of the term "unblockable drain" in the Virginia Graeme Baker Pool and Spa Safety Act, I called for public participation, particularly because we were aware that a number of state health officials were concerned about the agency's approach. This was rejected. *See* Nancy Nord, *Statement on the revocation of the interpretation of the term "unblockable drain" under the Virginia Graeme Baker Pool and Spa Safety Act* (Sep. 28, 2011), http://www.cpsc.gov//PageFiles/123764/nord09282011.pdf.

[6] *See* Nord, *supra* note 3, at 2.

[7] *Compare* Amendment to Certificates of Compliance, 78 Fed. Reg. 28,080, 28,106 (proposed May 13, 2013) (add totals from Tables B–2 and C–2) *with* Nord, *supra* note 3, at 6 (add totals on table from row entitled "File certificates with CBP") *and* Tenenbaum & Adler, *supra* note 4, at 5 (citing "about $75 million" as the cost that should be cited in lieu of approximately $424.2 million annually).

[8] *See* Nord, *supra* note 3, at 6 nn.14–19, *citing* Testing and Labeling Pertaining to Product Certification, 76 Fed. Reg. 69,482, 69,537–40 (Nov. 8, 2011) (codified at 16 C.F.R. pt. 1107) (PRA analysis); Conditions and Requirements for Relying on Component Part Testing or Certification, or Another Party's Finished Product Testing or Certification, to Meet Testing and

3. None of us disputes our staff's estimate of the annual paperwork burden created by Parts 1107 and 1109, not included in the original PRA analyses for those rules, and thus included in *this* NPR's PRA analysis because the agency is required to provide such an estimate and this analysis was an appropriate place to put it, because this rule is part of the testing and certification triad. This is about $14.9 million per year.[9]
4. None of us disputes our staff's estimate of the paperwork burden created by the original 2008 version of Part 1110, which was not then estimated but now has been estimated. Annually, this is about $118 million.

These are our staff's estimates, which none of us have disputed. Now, the great leap of logic that my colleagues accuse me of is recognizing that the three rules—Parts 1107, 1109, and 1110—are related. Part 1107 and 1109 address the testing requirements that form the basis of the certificate, whose requirements are covered in Part 1110. Together, they form a triad. In combination, their paperwork costs total $424.2 million annually. Whether or not the total is important to my colleagues, it is important to me, and I believe it will be important to Congress and to the public.

As I made clear in my amendment and in my statement, the annual $424.4 million cost is combined cost. To the extent that my colleagues believe that I stated the total combined paperwork costs to mislead the public about the costs imposed by this revision of Part 1110, nothing could be further from the truth. The chart I proposed does not mislead the public, nor does my statement. I fear my colleagues may also believe I want to foist the full responsibility for that combined annual total onto them, as the current majority on the Commission. This is also untrue. A substantial portion of the costs imposed—those of Part 1110 as originally promulgated—were imposed while I was Acting Chairman, at Congress's direction. Indeed, it is surely fair to say that a substantial portion of the annual $424.2 million total is outside the agency's discretion entirely. Whatever the outlines of a certificate rule, Congress required it, and it is only our job to estimate it in the PRA analysis, along with the burdens that we add to Congress's minimum. (I suspect we would disagree on precisely what that minimum is, but its existence is not in doubt.)

My colleagues assert that I proposed including the annual paperwork costs of the triad of testing and certification rules for political reasons. Is it political to include this total in the *Federal Register* notice? If it is political to state the numbers clearly, then call the chart political. If it is political to highlight the cost of an administrative regime, then

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Certification Requirements, 76 Fed. Reg. 69,546, 69,578–80 (Nov. 8, 2011) (codified at 16 C.F.R. pt. 1109) (same).

[9] *See id*. at 6 n.16, *citing* 78 Fed. Reg. at 28,092–106 (PRA analysis).

call the chart political. If it is political to believe that more clear speech from the federal bureaucracy is good—when that bureaucracy is hardly a bastion of clarity[10]—then call the chart political. My motives, however, are not and were not political.

I respect my colleagues' perspectives on the mission, objective, and standards of regulatory agencies generally, and I agree with them on many (but not all) key matters. I have long been an advocate for consumer safety, and I believe that the best way to achieve that is to seek collaboration among the many interests involved, which sometimes compete and sometimes work in concert with each other. Our goal in governing through regulation should be to maximize safety at the lowest cost.

Anyone familiar with my time at the agency is aware that I believe—along with many economists, judges, policymakers, and members of the public—that regulations are not costless or perfect. Congress, reacting to alarming (and alarmist) reports, passed the CPSIA in 2008 to improve consumer safety. I worked with Congress as Acting Chairman of the agency before the adoption of CPSIA, and I worked with Congress afterward, both as Acting Chairman and as a Commissioner. I agreed with Congress that parts of the agency and its organic statute needed changes; I suggested some, and Congress accepted some of my proposals, and added many other provisions.

Yet my colleagues write that my "concerns about the 1110 rule boil down to what we consider her main objection to the certification rule": my "insist[ence] that the costs associated with these measures cannot be justified." They write that I have voted against rules promulgated under "most, if not all, of the [CPSIA]'s provisions." It is puzzling that they bring up this point now. And it is troubling that they stray from focusing on the merits and defects of our respective policy positions and into the motivations behind my votes and amendments on CPSIA-related actions.

Of course, no one who has paid attention would say that I agree with every jot and tittle of the CPSIA. And many of the rules the agency has promulgated under the statute have been, in my judgment, unduly burdensome. But I believe that as a duly appointed and sworn member of the Commission, I must administer the law as Congress writes it. I strive to do so the best way I see open to the agency, and so I offer amendments where I view proposals as diverging from the best reading of the law. (And where my views and our statutes' commands diverge, I defer to our statutes.) No one should expect anything different from me, and I do not expect anything different from my colleagues.

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[10] *See* Plain Writing Act of 2010, § 2, Pub. L. 111–274, 124 Stat. 2861 (codified at 5 U.S.C. § 301 note) ("The purpose of this Act is to improve the effectiveness and accountability of Federal agencies to the public by promoting clear Government communication that the public can understand and use.").

To the extent their concern about my opposition to their implementation of the CPSIA is relevant, I repeat—I follow the law and seek to have it applied in the manner I believe is most effective. But I am not at all sure that their point *is* relevant—the proposals and objections I made with respect to this NPR have been based on good-faith legal and policy conclusions, and this is true of all of my proposals over the years. That my colleagues feel the need to conjure this bogeyman suggests their objections' paucity.