

June 16, 2009

Senate Hears CPSC Chair Nominee; Confirmation of Tenenbaum Seems Likely

With no apparent opposition in sight, the confirmation of Inez M. Tenenbaum, President Obama's nominee to chair the Consumer Product Safety Commission, is expected to proceed quickly, lawmakers said, as she faced Senate Commerce Committee questioning June 16.

Tenenbaum offered her views on management, staffing, the problems related to provisions of the Consumer Product Safety Improvement Act, enacted in 2008, industry guidance to quell businesses' confusion over requirements pertaining to lead, analysis of Chinese dry wall, and various consumer products affected by the CPSIA.

"I will ensure that the Commission is operated in an open, transparent, and collaborative way and in a manner worthy of the American people. As the new Chairman, I will reassure America's families that their government can and will protect them from unknown or unforeseen dangers in the products they use," Tenenbaum told the Senate Commerce, Science, and Transportation Committee in an opening statement. Her nomination as chair of the CPSC is expected to be confirmed quickly.

She said her familiarity with the regulatory process and work with advocacy groups have trained her to understand that she needs to work in partnership.

Sen. Jim DeMint (R-S.C.), to whom she lost the S.C. Senate seat in 2004, said "there is no one better qualified" to manage the agency than Tenenbaum. He added that he could see no reason why she would not be confirmed quickly.

Unintended Consequences of Law

Noting that the goal is more safety, not more regulation, DeMint said that the agency should make sure products are safer but also ensure the survival of small manufacturers in the United States. The law currently makes it difficult for these manufacturers to conduct necessary testing and continue to survive, he said.

Ranking committee member Sen. Kay Bailey Hutchison (R-Texas) immediately called for a hearing to address the "unintended consequences" associated with the CPSIA, particularly with respect to the law's effect on thrift stores, charity sales, and small businesses. "Overall, last year's law is a good one, and it makes many improvements to the agency," Hutchison said. "While we worked very hard to write a good bill and had the best of intentions, we knew it was not perfect, and unintended consequences of the law have since surfaced."

Noting the need for "common sense," Hutchison asked whether the law gives the CPSC "flexibility" to address the common sense application of the law.

Tenenbaum said it is premature to answer that question, adding that she would seek input from fellow commissioners and the CPSC staff. A top priority is to issue guidance (for

example, for tracking labels) and implement regulations and then evaluate the agency's ability to be flexible on enforcement, she said.

Tenenbaum also reassured the committee that “industry knows that their views will be heard and considered.” With respect to a question about whether stays of enforcement are sufficient, Tenenbaum said they “seem to be working,” but the agency will probably need to issue fewer stays of enforcement over time.

Hazards of Chinese Dry Wall

Concerns over the health hazards of Chinese drywall prompted two lawmakers, Sens. Mark Warner (D-Va.) and David Vitter (R-La.), to call on Tenenbaum to address the issue's “enormous challenge.” They raised questions about the length of time it is taking to conduct tests, the inconclusiveness of the tests, and the fact that inspectors are getting sick during inspections and have begun Chinese drywall inspections over the phone to avoid becoming sickened.

The problem seems to be most prevalent in humid climates, although 36 states now claim to have a problem with the drywall, Warner said.

Calling it a “very real problem,” Tenenbaum said the issue will be a “top priority.” The CPSC will work to lay out time lines for the conclusion of tests, conduct a full briefing to establish a schedule, ask for a meeting with the CPSC's Chinese counterpart to discuss the concerns, and review the agreement with China, she said.

Tenenbaum also answered queries about crib safety (CPSIA requires voluntary standards to become mandatory this year); all-terrain vehicles (ATVs) with respect to lead limits for on parts that are accessible to children; and third-party testing.

With respect to ATVs, Tenenbaum said, “As soon as we issue guidance and regulations, the industry will comply.” She said she would move quickly to issue clear guidance.

She said third-party testing will be implemented this year and the agency will work with U.S. Customs to ensure that third-party certificates are correct.

The CPSIA also requires the agency to develop an early-warning database that will allow consumers the opportunity to report information on potentially defective products. Tenenbaum said she will oversee the implementation of the database and make it publicly accessible.

The committee could finish reviewing Tenenbaum's responses before the end of the week of June 18, a committee spokesman said. A full Senate vote would follow.

Link to webcast of hearing and PDF transcript <http://bit.ly/Th9vc>

http://commerce.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing_ID=0f12faec-54d6-4df4-8c2a-a4eff437f3a6&Witness_ID=404ace0f-35f9-4633-b80a-f8275b8e20f1