

Obama's Re-Election Will Have Long-Term Effect On CPSC

Law360, New York (November 08, 2012, 1:45 PM ET) -- The re-election of President Barack Obama will affect the Consumer Product Safety Commission — but more for what it does not change than for what it does change. The current CPSC is dominated by a Democratic majority of commissioners. Obama's re-election will ensure that Democratic dominance and regulatory philosophy will not change for years to come.

The CPSC is an independent federal agency responsible for the regulation of virtually all consumer products made or sold in the United States. The Consumer Product Safety Improvement Act of 2008 (CPSIA) vastly expanded the CPSC's scope and authority, just as the newly elected Obama took office. To a great extent, the CPSC implemented the CPSIA through rule makings and enforcement policies essentially independent of the new president's actions — with one major exception — appointments of the commissioners and the chairman.

The Consumer Product Safety Act as amended by the CPSIA gives the president the power to appoint the five commissioners with the advice and consent of the Senate. However, the law also mandates, "Not more than three of the Commissioners shall be affiliated with the same political party." The president can, therefore, create a majority of commissioners who control the commission's rulemaking and enforcement actions.

In his first term, Obama made use of this power and appointed three new commissioners (including a new chairman of the commission, Inez Tenenbaum.) Obama's appointees had a significant impact on the implementation of the CPSIA. During many important rulemakings the CPSC split 3-2 along party lines. The three Democratic commissioners overrode the two Republican commissioners' bitter opposition to the formulation of key new regulations under the CPSIA, including the creation of a database for consumer product safety complaints, as well as broad ranging testing and certification rules. In these and other actions, the CPSC resolved divisive disputes by majority fiat.

The re-election of Obama to a second term means that he will have the ability to guarantee a Democratic-controlled CPSC for years to come. Commissioners are appointed for a term of "seven years from the date of the expiration of the term for which his predecessor was appointed" (plus one-year extensions).

Within roughly the last year, the terms (and extensions) expired for both Democratic Commissioner Thomas Moore and Republican Commissioner Anne Northrup. Obama nominated Marietta Robinson to replace Moore. Her nomination has been pending since May of this year when she completed her Senate hearings. The president has not yet nominated a replacement for Northrup, whose term recently ended in October 2012. Thus, during the last year, the CPSC briefly moved from a Democratic majority to an even split and then back to its current 2-1 Democratic majority.

With his re-election secured, Obama can place his long-term stamp on the commission's membership. Not only will he appoint the replacements for Commissioners Moore (Democrat) and Northrup (Republican), but he will also appoint successors to the three existing commissioners: Republican Commissioner Nancy Nord, Democratic Chairman Tenenbaum and Democratic Commissioner Robert Adler. The later three commissioners' terms will expire, respectively, in 2012, 2013 and 2014 (plus one-year extensions). The president will, therefore, be able to appoint (or reappoint) every one of the five commissioners to terms that extend far into the future.

While the president can and will change the individual composition of the CPSC, he will not alter the essential political dynamic, inherent in the makeup of the Democratic-majority commission. What did not occur — the election of the Republican presidential candidate Mitt Romney — is more meaningful simply because the policies and philosophies of the Consumer Product Safety Commission will remain essentially unchanged with Barack Obama's re-election.

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