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Is the Consumer Product Safety Commission in Transition?

By Charles E. Joern – February 28, 2017

The United States Consumer Product Safety Commission (CPSC), like almost all of the federal government, is in a state of change. Just how extensive that change will be, is uncertain at this point. At the CPSC there are signs of both transformation and stability.

Several factors indicate a new direction at the CPSC. First and foremost, there is a new chairman. The commission's leadership has rapidly moved from an Obama appointee to a selection from the Trump White House. On February 9, 2014, Anne Marie Burkle became the Acting Chairman of the CPSC, replacing Elliot Kaye, who served as chairman since 2014. Burkle is a former Republican congressman whose policies are very different from those of her predecessor.

In an appearance at a symposium in Florida, Acting Chairman Burkle stated that the CPSC needs to be more in tune with the American people. She said Americans expressed a desire for change in the recent election and want the government to operate differently. Burkle has repeatedly voted against the Democrat majority CPSC on many issues in the past. Her positions on civil penalties and various rulemakings are often at odds with the commission's liberal members.

Beyond Acting Commissioner Burkle's own regulatory philosophy, she has also differed from the commission majority on the CPSC voluntarily following President Trump's recent directives on regulations. The White House has announced a clear agenda for regulatory reform in two executive orders: one, a freeze on the enactment of new regulations and two, a "two out, one in" requirement for new regulations. Burkle believes that the CPSC should follow the spirit of the executive orders even though they are not binding on independent agencies such as the CPSC.

The transition from Chairman Kaye to Acting Chairman Burkle would therefore seem to portend big changes in the policies and actions of the CPSC. That however may not be the case—at least for now. There are several reasons to believe that while the CPSC may change direction, that transformation will be somewhat gradual.

First, the current 3–2 Democrat to Republican majority will stay in place until at least October 2017. CPSC commissioners serve staggered seven-year terms. Even though the commissioners are appointed by the president has the power to appoint three of the five commissioners, the active commissioners can serve their complete terms, even when there is a change in political power. The first commissioner's term to expire is that of a Democrat, Marietta Robinson. Her term expires in October 2017. Robinson also has the option of extending her term one additional year. Therefore, the commission will be led by an acting chairman who will not have a working majority until October at the earliest. Any of Acting Chairman Burkle's initiatives will need at least one democrat commissioner's vote to pass.

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Second, Acting Commissioner Burkle has announced that she will take a “collaborative” approach in running the CPSC. This is consistent with her actions as a commissioner. Burkle has consistently avoided antagonism and aggression in her dealings with opposing commissioners. She seems to be very aware that she cannot make any significant transformations without the assistance of Democrat commissioners.

Third, the CPSC is an independent regulatory agency and is not a department in the executive branch. Even though the CPSC is part of the executive branch, by statute it operates independently. Executive orders issued by the president are not binding on the CPSC. The regulatory freeze and the “two out, one in” executive orders are not mandatory directives to the CPSC. The CPSC can independently agree to follow the “spirit” of these executive orders, but the commission is not bound to follow them. Once again, Acting Chairman Burkle is going to be limited in her ability to go along with these regulatory reforms until either she has an appointed working majority—or she can convince an opposing commissioner.

Fourth, Acting Chairman Burkle has kept key CPSC staff members in place at the Commission. One of her first actions was to retain the current CPSC Executive Director, Communications Director and General Counsel among others. Burkle recognizes that the CPSC is a big boat that won’t turn around quickly. It is another indication that while the CPSC is an agency in transition, that transformation will be limited in the near future.

Do not expect a lot of sudden changes at the CPSC—at least for a while.

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