

Consumer Protection: Post-Election Update 2016

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Donald Trump's win on Election Day will greatly change the composition of the **Consumer Product Safety Commission (CPSC)**, as the change from a Democratic administration to a Republican administration means the commission will have a new chairman as well as a majority of Republican commissioners. Additionally, the Republican majority in the Senate will ensure that oversight over the agency's rulemaking activities remains a top priority.

President-elect Trump's first order of business will be to appoint a new chairman. Precedent suggests current Chairman Elliot Kaye will step down at the start of President-elect Trump's term in January, leaving Trump to name a new chairman. In the interim, the most senior Republican commissioner, Anne Marie Buerkle, will be named acting chairman. The Commission will then be made up of two commissioners from each party, guaranteeing a tie on any controversial proposal before CPSC. Ultimately, once a new chairman is confirmed, party control of the Commission will flip from Democrats to Republicans with a 3-2 margin.

As for the rest of the members on the CPSC, should President Trump decide to elevate a current Republican commissioner to permanent chairman, he would then have to nominate an additional Republican Commissioner to fill that vacancy. Commissioner Robinson's term is set to expire in October 2017, which will mark Trump's first opportunity to make a selection for the Democratic slot.

CPSC Regulatory Agenda:

Between now and end of President Obama's term, it will be important to watch for the finalization of "midnight regulations" before Republicans take the White House and Congress.

CPSC priorities were outlined in the fiscal year 2017 Operating Plan, which passed on October 19 along party lines, 3-2. The package as a whole includes the following agenda items that Chairman Kaye may attempt to complete prior to a personnel change at the Commission:

- Proposed rulemaking that would make important changes to the Voluntary Recall Rule under Section 15 of the Consumer Product Safety Act;

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- Proposed rulemaking that would compel significant changes related to information disclosure under Section 6(b) of the Consumer Product Safety Act;
 - Proposed rulemaking regarding CPSC staff participation and involvement in voluntary standards activities;
 - Proposed rulemaking amending existing regulations on Certificates of Compliance; and
 - Continued rulemaking under Section 104 of the Consumer Product Safety Information Act (CPSIA) for certain durable infant and toddler products, including cribs.
 - Final rulemaking on products including table saws, upholstered furniture, portable generators, and ATVs based on conspicuity.

Additionally, the Commission's meeting on October 19 brought a series of controversial amendments that were included in the final package. These included an amendment proposed by Chairman Kaye to add crib bumpers as durable nursery products, direct staff to continue with rulemaking under Section 104 and add them to the recall registration card rule. An additional standards participation amendment filed by Commissioner Robert Adler directed staff to look at ways to increase consumer group participation in standards-development activity, using CPSC funds to compensate travel costs. The Republican Commissioners were concerned this would amount to a blank check, and the amendment was revised specifying that no funding would occur until after commissioners had a chance to review a proposed protocol.

Commissioners Buerkle and Mohorovic expressed displeasure with the final operating plan due to the reemergence of voluntary recall and 6(b) rulemakings on the agenda despite Chairman Kaye previously testifying to Congress these were not going to be priorities. The Commissioners also pointed to "mission critical" vacancies in senior management positions as needing to be a greater focus than premature mandatory rulemakings.

Ultimately, Commissioners Buerkle, Mohorovic, and the third Republican to join the commission will be able to leave a lasting mark on the fiscal year agenda for the Commission, terminating rulemakings viewed as government overreach and too aligned with a "Nanny State" mentality. However, in the meantime, look for any of these rules to be expedited as Democrats understand this will be their last opportunity before the transition.

Changes to Senate and House Committees with Jurisdiction:

Republicans retaining the majority in the Senate means Senator John Thune (R-SD) will keep his chairmanship. Senator Bill Nelson (D-FL), the current ranking member, is likely to remain in his position as well. The other Senior Democrats on the committee are unlikely to challenge Nelson, including Maria Cantwell (D-WA), and Claire McCaskill (D-MO) who are likely to have other leadership preferences besides Commerce.

Senator Jerry Moran (R-KS) currently serves as Chairman of the Consumer Protection, Product Safety, Insurance, and Data Security subcommittee and is likely to stay on, as is Ranking Member Senator Richard Blumenthal (D-CT). This is the subcommittee with jurisdiction over CPSC, and it is probable the oversight strategy of reigning in CPSC rulemaking employed in the current Congress will remain.

Additional leadership changes include those to the Subcommittee of the Energy and Commerce Committee with oversight of the CPSC. The House of Representatives remains under Republican control, however Representative Fred Upton (R-MI) is officially termed out as Chairman of the House Energy and Commerce Committee. The race for the chairmanship is now centered on two candidates, Representative John Shimkus (R-IL) and Representative Greg Walden (R-OR). Shimkus holds the seniority, and has been involved in energy based issues his entire career. Walden, on the other hand, is Chairman of the National Republican Congressional Committee, and due to his success in defending the majority may be considered for a leadership post. On the other side of the aisle, Rep. Frank Pallone (D-NJ) is likely to maintain his ranking membership, although Anna Eshoo (D-CA) has expressed interest in the past.

Subcommittee leadership slots will be hotly contested, as the opening left by Upton will cause a reshuffling among Republicans. Commerce, Manufacturing, and Trade Subcommittee Chairman Burgess will probably move because of Chairman Pitts's and Whitfield's retirements. Other Senior Republicans on the committee who could take the gavel include Leonard Lance (R-NJ), Marsha Blackburn (R-TN), and Gregg Harper (R-MS). Jan Schakowsky (D-IL), the current ranking member, is viewed as likely to retain her post.

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