

Buerkle Withdraws: CPSC's Future Gets Hazier

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In a surprise statement on Tuesday, Acting Chairman Ann Marie Buerkle of the U.S. Consumer Product Safety Commission (CPSC) announced that she had withdrawn her nominations for the permanent chair and for another term. Unless another nominee is confirmed in the interim, her term will end on October 26, 2019.¹ What happens in the interim will shape the agency's course well into the next decade.

While the announcement was a surprise, her departure had been a growing possibility for months. Her nominations came to the Senate floor three times. In 2017 and 2018, they were returned to the White House with no action when Congress adjourned at the end of the year. This year, her nominations had been back on the floor since early April with no signs of movement.

Buerkle's decision raises a series of questions:

- **Whom will the White House nominate as chairman?** Presumably, one of the two other Republicans on the Commission – Dana Baiocco and Peter Feldman – would be the front-runner, though it's possible the nominee for Buerkle's seat could get the nod for the chairmanship, as well. But, about that...
- **Whom will the White House nominate to fill Buerkle's seat?** The difficulties of the appointment process continue to make recruiting for high offices a challenge, and Buerkle's nomination history makes the prospect of the confirmation ordeal even less attractive.
- **Can the Senate confirm any nominee?** The Senate's pace on nominations has been an issue throughout the 115th and 116th Congresses. Until April, Senate rules essentially required a full week of floor time per nominee. The Republican majority reduced the necessary time for most positions, but that change was not enough to get Buerkle's nominations through. With the 2020 presidential election drawing nearer, the incentive for the Democratic minority to keep positions open will only increase.
- **What happens next for the agency?** If the Senate confirms a new nominee, Republicans would have the opportunity to hold control of the CPSC until at least 2024. If not, the Commission would shift to a 2-2 split, with an opportunity for the agency to revert to Democratic control in 2021, depending on the election.

In Washington, it's often said that "personnel is policy." Of course, policy is also policy, but, as the House and Senate consider both product-specific bills and, potentially, more significant CPSC legislation, the open question of CPSC leadership will shape these conversations. For CPSC stakeholders – including regulated industry – the only certainty from Buerkle's announcement is more uncertainty, and those stakeholders should pay close attention and share their views about the future of the agency.

[1] If the White House submits and the Senate confirms a new nominee before October 26, Buerkle's term would end with that nominee's swearing in. This seems unlikely.

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[Mike Gentine](#)
[Product Liability & Mass Torts Blog](#)

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