

4 Things To Know About CPSC Chair Nominee Nancy Beck

By Emily Field

Law360 (March 4, 2020, 10:37 PM EST) -- President Donald Trump earlier this week announced his intent to nominate Nancy Beck, a former chemical industry lobbyist, to chair the Consumer Product Safety Commission, which was swiftly met with opposition from consumer groups and Democratic politicians.

U.S. Rep. Frank Pallone, D-N.J., on Tuesday said that her nomination would undermine the agency's mission to protect public safety, pointing to her past work as a lobbyist and decisions she made while working in the federal government. However, her background as a scientist — and not as a lawyer — may be a boon for the agency.

Here are four things to know about Beck:

Scientist to Head Agency

Unlike her predecessors, Beck is a scientist with a doctorate from the University of Washington in environmental health. Former acting CPSC chair Ann Marie Buerkle, who stepped down in October, was a Republican Congresswoman from New York who was tapped to be a commissioner at the CPSC in 2013 after losing a reelection bid and Robert Adler, the current acting chair, was a deputy attorney general in Pennsylvania's justice department.

"She is superbly qualified. The CPSC contemplates diversity in backgrounds and I don't know when CPSC last had a scientist, if ever," said Chuck Samuels of Mintz Levin Cohn Ferris Glovsky and Popeo PC.

One of the justifications for independent agencies like the CPSC is that they are headed by experts and people with a range of backgrounds, Samuels said.

"The reality is in the history of the CPSC, certainly recently, what you really have are lawyers," Samuels said. "Some of them have other backgrounds, obviously Ms. Buerkle was a former member of Congress and a nurse, but otherwise you have standard variety lawyers, who have no particular background in any technical areas, such as engineering, science or health."

As a person of science, Beck is likely very interested in plunging in-depth into the issues and would not be intimidated by complex science and technology issues, Samuels said.

Deep Regulatory Background

Beck, who could not be reached for comment, has held positions in federal government starting in the Clinton administration and continuing into the Obama administration.

That includes positions at the U.S. Environmental Protection Agency and the Office of Management and Budget. Before her nomination, Beck headed the EPA's Office of Chemical Safety and Pollution Prevention.

"She's going to come in with a fairly deep familiarity with federal regulatory agencies in general, obviously each agency is a little bit of its own animal," Mike Gentine of Schiff Hardin LLP said.

Before her post at the EPA, Beck was the senior director for science regulatory policy at the American Chemistry Council, a chemical industry lobbying group.

During her tenure at the ACC, the CPSC issued a rule in 2017 barring children's toys and child care articles containing phthalates, which are used for softening plastics and making them more pliable. The ACC opposed the rule.

"Obviously some of the member companies at ACC are involved in those chemicals, so she is certainly familiar with the agency, even though most of her work has been at other federal agencies," Gentine said.

Troubling Record for Consumer Groups

In his statement opposing Beck's nomination, Rep. Pallone pointed to her record at the EPA, where she oversaw the rewriting of a rule that the congressman said made it harder for the agency to track the health consequence of "forever chemical" PFOA, or perfluorooctanoic acid.

"I would say that, given Dr. Beck's previous position on weakening health and safety standards, that her nomination seems incredibly concerning for consumers and would set the agency back," said Remington Gregg, an attorney at nonprofit consumer advocacy group Public Citizen.

Gregg also pointed to a Congressional investigation in 2009 that revealed Beck had overrode scientific decisions when she was working as a policy analyst in the OMB during the Bush administration. Additionally, she delayed the release of a government study showing PFAS, another forever chemical, was dangerous, according to Gregg.

"So given her history ... a constant history of delaying or slowing down or attempting to stop strong protections as it relates to chemicals in different forms, there's serious concern that the past is prologue," Gregg said.

The CPSC is currently mulling a rule that would ban the use of organohalogen flame retardants in certain products, Gregg said, and as CPSC chair, Beck will be able to set the agency's agenda.

"The chair has enormous authority on moving the agenda," Gregg said. "If she doesn't want something to move forward, it doesn't move forward."

What Will Be On Her Plate

Matthew Cohen of Crowell & Moring LLP said that the product safety community should expect Beck to favor some deregulation, in the spirit of a number of executive orders issued by the Trump administration.

But the CPSC has only had an acting chair for the past three years, Gentine said, and since Buerkle stepped down in October, things at the agency have ground to a halt.

"The commissioners just aren't sure who's going to be on the seventh floor ... and that instability and uncertainty tends to slow things down and tends to have people moving in different directions," Gentine said.

The number one job for anyone as the new head of the CPSC will be to walk halls and build relationships among their fellow commissioners so they can start identifying policy priorities and try to advance those, Gentine said.

The CPSC has been especially quiet with Adler as the acting chair, as he is presiding over an evenly split commission between Democrats and Republicans that makes it harder to come to a consensus over major policies.

"The catchphrase is that safety isn't political and of course at some level it shouldn't be. If there are unsafe hazardous products out there then dealing with those isn't a question of politics," Gentine said. "But of course this is a political entity, all of government is a political entity, and the political process is how we make decisions."

--Editing by Emily Kokoll and Michael Watanabe.

Correction: This article originally stated that the commissioners are on the second floor, not the seventh. The error has been corrected.