

GAO

Testimony

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Administrative Structure of the
Consumer Product Safety Commission

Statement of
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Before the
Subcommittee on Commerce, Consumer Protection,
and Competitiveness
Committee on Energy and Commerce
House of Representatives



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SUMMARY

GAO reviewed the administrative structure of the Consumer Product Safety Commission (CPSC) at the request of Representative Henry Waxman, Chairman, Subcommittee on Health and the Environment, House Committee on Energy and Commerce.

Although we could find no objective criteria to measure the effectiveness of a single administrator compared to a multimember commission, we did find several indicators that suggest CPSC could benefit from changing to a single administrator. These included:

- There has been little stability in CPSC leadership. For example, since its inception in 1973, CPSC has had nine chairpersons--four acting and five confirmed.
- Seven of the eight other health and safety regulatory agencies that we identified were headed by single administrators.
- All former confirmed chairpersons and executive directors favored a single administrator.
- A single administrator would be less costly than a commission.

Whether CPSC should be a separate agency or part of an executive department has been a matter of debate since the Congress considered establishing it. Disagreement still exists about CPSC's organizational status. We could find no criteria or preponderance of evidence for determining whether CPSC should remain as a separate agency or be made part of an executive department. Therefore, we are making no recommendation about CPSC's organizational placement.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the administrative structure of the Consumer Product Safety Commission (CPSC). We issued a report¹ on this subject to Chairman Henry Waxman of the Subcommittee on Health and the Environment on April 9, 1987.

GAO FAVORS THE SINGLE ADMINISTRATOR
STRUCTURE FOR CPSC

Although we could find no objective criteria to measure the effectiveness of a single administrator compared to a multimember commission, we did find several indicators that suggest CPSC--as a regulatory agency responsible for protecting citizens' health and safety--could benefit from changing to a single administrator.

The rationale for establishing independent commissions, such as CPSC, includes the assumptions that (1) long-term appointment of commissioners would promote stability and develop expertise, (2) independent status would insulate them from undue economic and political pressures, and (3) commissioners with different political persuasions and interests would provide diverse viewpoints.

However, since CPSC was established, there has been little stability in its leadership; both present and former CPSC officials cited leadership turnover as the cause of much uncertainty within the Commission. For example, in its 14-year

¹CONSUMER PRODUCT SAFETY COMMISSION: Administrative Structure Could Benefit From Change (GAO/HRD-87-47, Apr. 9, 1987).

history, CPSC has had nine Chairpersons--four acting and five confirmed.

Additionally, since 1973 CPSC has had eight executive directors, of whom five served in an acting role. One of the acting executive directors was later appointed as the executive director. Furthermore, during 1976, 1979, 1982, and 1985, the position of executive director was vacant for periods of 1 to 10 months. Finally, of CPSC's 13 former Commissioners, 9 did not complete their appointed terms.

Relative independence from political and economic forces was often cited in CPSC's legislative history as a reason for creating it as an independent commission; however, real independent status is difficult to achieve. Both the Congress and the executive branch, through various mechanisms, are able to exert considerable influence on CPSC. For example, the Office of Management and Budget is able to exert considerable influence through its budget review and Paperwork Reduction Act requirements.

Another rationale for independent commissions is that they provide diverse points of view. However, the Commissioners' voting records do not show much diversity on issues they have voted on over the past 5 years. We recognize that voting records are not the only indicator of diversity, because much discussion about the pros and cons of various issues obviously takes place before votes are taken. But, in the final analysis, it is the Commissioners' votes that result in policy positions.

At CPSC, from fiscal year 1982 through fiscal year 1986, the Commissioners voted for the options recommended by the staff nearly 90 percent of the time, and the Chairperson voted with the majority 95 percent of the time. CPSC's Commissioners voted unanimously in 73 percent of the votes taken during this period.

Subsequent to issuing our report, we obtained the Commission votes for the first 9 months of this year. We found that, despite the well publicized disagreements among the present commissioners, of the 45 votes taken, 32, or 71 percent, were unanimous. There were also 8 split votes and 5 votes with an abstention.

Most of the high-level officials we interviewed--such as former Chairpersons of CPSC, single administrators, and other officials of other health and safety regulatory agencies, and officials of public interest and industry groups--believed that a commission is not an effective administrative structure for CPSC. All former confirmed Chairpersons and former executive directors of CPSC indicated that CPSC's administrative structure should be changed to that of a single administrator.

On the other hand, others interviewed, including three of the five Commissioners as of May 1986 and one of the two public interest groups, believed that for CPSC the commission structure was better than a single administrator.

About 3 percent of CPSC's annual budget is spent on the salary, supporting staff, and other associated costs for the

four Commissioners (not including the Chairperson). CPSC's fiscal year 1986 operating plan showed that about \$1.1 million was budgeted for these four Commissioners. Eliminating the four Commissioners and changing to an organization with a single administrator would eliminate the \$1.1 million in budgeted costs for the commission structure. It should be noted, however, that CPSC has had two Commissioner vacancies since August 1986 and, as long as these positions remain vacant, CPSC's cost for the Commissioners will be considerably less than the amount budgeted for in fiscal year 1986.

Seven of the eight other health and safety regulatory agencies that we identified have single administrators. These are the Environmental Protection Agency, the Federal Aviation Administration, the Food and Drug Administration (FDA), the Food Safety and Inspection Service, the Mine Safety and Health Administration, the National Highway Traffic Safety Administration, and the Occupational Safety and Health Administration. We interviewed officials in five of these agencies, all of whom supported the single administrator structure, particularly because they believed this structure would enhance the decision-making process.

Based on these factors, we propose that the Congress consider amending section 4 of the Consumer Product Safety Act to provide for a single administrator appointed by the President with the advice and consent of the Senate.

SEPARATE AGENCY OR PART
OF EXECUTIVE DEPARTMENT?

We could find no criteria or preponderance of evidence for determining whether CPSC should remain as a separate agency or be made a part of an executive department. CPSC's legislative history shows that most of the debate in the Congress concerning the creation of CPSC centered on the question of the need for a separate agency. The Congress considered several options for carrying out consumer product safety functions and responsibilities. Some of the arguments that influenced the decision to establish CPSC as an independent commission included the belief that

- an independent commission could best carry out the legislative and judicial functions of the Consumer Product Safety Act because it would be better insulated from economic and political pressures;
- an independent commission assures high visibility for consumer product safety; and
- regulatory programs in executive departments typically suffer from lack of adequate funding and staff.

Our discussions with CPSC and other public and private sector officials suggest that disagreement still exists about CPSC's separate organizational status. For example:

- Three of the four former confirmed CPSC Chairpersons told us that CPSC should not remain a separate agency; the other Chairperson told us that it did not matter. On

the other hand, the current Commissioners and most of CPSC's high-level staff said that CPSC should remain a separate agency.

--Officials at the Department of Health and Human Services disagreed as to whether CPSC should be in FDA. One high-level official told us that CPSC should be placed in FDA; another felt strongly that it should not.

--Similarly, differences of opinion exist in the private sector. For example, of the seven groups interviewed, officials in four thought CPSC should remain a separate agency, two thought it should not, and one expressed no opinion.

We compared the organizational status of CPSC with that of eight other health and safety regulatory agencies; we tried to determine if there was any rationale for the organizational status or administrative structure of these agencies. We found differences in the status and structure of the nine regulatory agencies--that is, six are part of executive departments, while three are separate.

Because of the lack of criteria and evidence for determining whether CPSC should remain as a separate agency or be made part of an executive department, we are making no recommendation about CPSC's organizational status.