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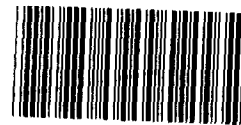
Testimony

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**Administrative Structure of the
Consumer Product Safety Commission**

Statement of
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Before the
Subcommittee on Consumer
Committee on Commerce, Science and
Transportation
United States Senate



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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 one administrative structure compared with another, 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, through 1986 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:

As requested, we are pleased to submit for the record the following testimony on the administrative structure of the Consumer Product Safety Commission (CPSC). We issued a report¹ on this subject to Chairman Henry Waxman, Subcommittee on Health and the Environment, House Committee on Energy and Commerce, on April 9, 1987.

Chairman Waxman requested that we (1) evaluate the current CPSC organization and administrative structure, considering reductions that have occurred in the agency's budget and staff and changes in its mission approach, to determine whether CPSC's functions could better be carried out by a single administrator, and (2) consider whether CPSC should remain a separate agency or be placed within another regulatory agency or an executive department.

GAO FAVORS THE SINGLE ADMINISTRATOR
STRUCTURE FOR CPSC

Although we could find no objective criteria to measure the effectiveness of one administrative structure compared with another, 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.

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

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 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. The high turnover rates in these key leadership positions have not promoted the stability or the development of expertise envisioned in the act that created CPSC.

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.

This degree of unity between the Chairperson and the other Commissioners at CPSC is not unusual for federal regulatory agencies. According to a 1977 study,² ". . . the influence of chairmen in comparison with that of their colleagues is substantial, sometimes determinative." The study further stated that "in formal proceedings and other instances when there are collective decisions, the chairman's decision has great impact."

Most of the high-level officials we interviewed--such as former Chairpersons of CPSC, single administrators, and other officials

²David M. Welborn, Governance of Federal Regulatory Agencies (Knoxville: The University of Tennessee Press, 1977), p. 109.

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. In discussing their opinions, these officials cited many problems with the current structure, including the following:

--Commission decisions are not prompt.

--The Commissioners often do not understand the technical issues that the staff has to deal with in its work.

--There is competition among the Commissioners concerning the use of CPSC resources.

--The commission structure is more appropriate for an agency with a significant adjudication function, which is not a large part of CPSC's responsibilities.

--The Commissioners tend to "micromanage" the day-to-day operations and are too involved with the process of preparing the budget and operating plan.

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. Their reasons included: (1) the commission structure is necessary in order for CPSC to maintain its independence and (2) that structure ensures continuity, exchange of ideas, and a mix of perspectives. This need for a

mix of perspectives--including diversity of background, areas of expertise, and political considerations--outweighs the disadvantages of a commission, according to these individuals.

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. About \$839,000 of this was for their salaries and their staffs; \$59,000 for operating costs, such as travel and subscriptions for periodicals; and \$215,000 for their share of common costs, which are primarily rent and utilities. Therefore, 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.

If CPSC were changed to a single administrator structure, should the single administrator have a fixed term of office and be removable from office only for cause? This question was raised to us by the Subcommittee. Although we did not research this question during our review, we did observe that all of the single-headed executive agencies serve at the pleasure of the President. With the view that CPSC's duties and responsibilities are similar to those of the health and safety organization listed above, we would recommend that a single-headed CPSC be similarly organized. (See Attachment I for legal background.)

A number of studies, such as those by the Hoover Commission and the Ash Council, have been done over the last 50 years on regulatory commissions. All of the studies we reviewed found some significant problems with the commission structure. Although some of these studies recommended changes to improve such agencies, others found little value in the commission approach and advocated changing it. Some of these studies recommended replacing the multimember commissions with agencies headed by single administrators.

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. These included

--adding more consumer product safety functions to the role of FDA;

--creating a separate consumer safety agency with three different commissions--Foods and Nutrition, Drugs, and Product Safety--each headed by a commissioner; and

--establishing an independent regulatory commission.

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.

The officials who supported placing CPSC in an executive department generally cited one or more of the following reasons for their position: (1) the Secretary of an executive department can better protect the agency from budgetary cuts; (2) the mission of CPSC is compatible with the mission of the Department of Health and Human Services; and (3) there is a need to reduce the number

of small separate agencies reporting to the President. Officials who favored separate agency status for CPSC generally cited one or more of the following reasons for their position: (1) it provides more visibility to consumer product safety; (2) it means that consumer product safety does not have to compete with other high-priority missions within an executive department; and (3) it reduces the opportunity to politicize the agency.

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.

Finally, major studies of independent regulatory commissions do not contain any consistent recommendations or criteria for their organizational status within the federal government. For example, the Brownlow Committee recommended in 1937 that independent regulatory commissions be integrated into the executive branch, where they would become agencies within executive departments. The Ash Council in 1971 recommended replacing regulatory commissions with organizations headed by single administrators reporting to the President. On the other hand, the Hoover Commission in 1949 recommended maintaining independent status for regulatory commissions.

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.

LEGAL REVIEW OF INDEPENDENT STATUS
OF REGULATORY AGENCIES

We were asked to comment on the authority of Congress to limit the President's power to remove a single administrator only "for neglect of duty or malfeasance in office," as is currently the case with members of the Commission, 15 U.S.C 2053(a). Although the Supreme Court has not squarely addressed this issue, it has considered challenges to the President's removal of commissioners of independent commissions. The Court has resolved these challenges by examining the functions performed by the agency involved.

In Myers v. United States, 272 U.S. 52 (1926), the Court held that the President had an "illimitable" power to remove a postmaster, an executive officer restricted to the performance of executive functions, notwithstanding an act of Congress to the contrary. However, in Humphrey's Executor v. United States, 295 U.S. 602, 628 (1935), the Court held that Congress may restrict the President's power to remove a member of an independent regulatory commission (specifically, the Federal Trade Commission) that "acts in part quasi-legislatively and in part quasi-judicially." The Supreme Court reiterated this view in Weiner v. United States, 357 U.S. 349 (1958), holding that the President could not remove a member of the War Claims Commission without cause where the statute reflected a clear congressional intention that members not be removable at the whim of the President. Thus, to the extent the

CPSC performs, and continues to perform, functions that are quasi-legislative and quasi-judicial, these cases suggest that Congress could similarly limit the President's power to remove a single administrator. However, the Supreme Court has not considered whether the rationale of these decisions applies where the functions of a regulatory agency are placed under a single administrator.

Putting aside the issue concerning the constitutional authority of the Congress to limit the President's removal power, the use of multimember commissions to head independent regulatory commissions gives the Congress additional mechanisms (such as staggered terms and appointments) to assure institutional independence. The greater independence afforded by a multimember commission, rather than any legal doubts concerning the Congress' authority to limit the removal of an administrator of an independent regulatory body, most likely explains why the Congress in the past has opted to head independent regulatory bodies with multimember commissions rather than single administrators.