

GAO

Briefing Report to Congressional Requesters

January 1987

CHEMICAL WARFARE

The Chemical Warfare Review Commission Did Not Comply With the Federal Advisory Committee Act



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United States
General Accounting Office
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National Security and
International Affairs Division

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January 13, 1987

The Honorable Jack Brooks
Chairman, Committee on Government Operations
House of Representatives

The Honorable Dante B. Fascell
Chairman, Committee on Foreign Affairs
House of Representatives

Your March 27, 1986, letter requested that we (1) review possible lobbying actions by or on behalf of the President's Chemical Warfare Review Commission (CWRC) to determine their legality and (2) determine the propriety of certain actions relating to CWRC operations. On June 25, 1986, we provided a legal decision on CWRC lobbying activities, and in August and September 1986, we responded to a number of the specific concerns cited in your letter. As requested, we also determined whether CWRC's management activities were typical of presidential commissions.

The President created the CWRC in January 1985 to review the adequacy of the U.S. chemical warfare capability. He assigned responsibility for the Commission's administrative and other support service activities to the Secretary of Defense. We found that the Office of the Secretary of Defense (OSD) did not comply with a number of the administrative requirements for presidential commissions as prescribed in the Federal Advisory Committee Act (5 U.S.C., app. I). Specifically, we found that the CWRC (1) did not maintain detailed minutes of meetings; (2) neglected to designate a federal official to attend each meeting; (3) disposed of government funds improperly; and (4) did not publish advance notices of all meetings. Details of our review are in appendix I.

Since CWRC records were not maintained in sufficient detail, we could not review the Commission's activities or trace the process that led the CWRC to the conclusions in its June 1985 report. In addition, financial records did not provide a complete accounting of the CWRC funds. We

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also found that OSD's management of the CWRC differed from two other presidential commissions in that both had complied with the major accountability provisions of the act.

In conducting our review, we examined CWRC files and records maintained by offices and individuals in OSD and by consultants who worked in support of the CWRC. We interviewed OSD officials, CWRC support staff, and consultants about CWRC management and activities. We also examined the internal controls required by the Federal Advisory Committee Act for presidential commissions and implementing regulations of the Defense Department and the General Services Administration. In addition, we briefly examined files and interviewed persons connected with the administrative management of two other presidential commissions to add perspective to our review of the CWRC. We conducted our review from June to November 1986 in accordance with generally accepted government auditing standards. We did not obtain agency comments on this report.

Unless you publicly announce its contents earlier, we plan no further distribution until 30 days from the date of this briefing report. At that time, we will send copies to interested parties and make copies available to others on request.

Should you need any additional information or have any questions on this briefing report, please contact Mr. Thomas J. Brew, Associate Director, on (202) 275-4133.



Frank C. Conahan
Assistant Comptroller General

DOD'S MANAGEMENT OF THE CHEMICAL
WARFARE REVIEW COMMISSION

The President established the Chemical Warfare Review Commission (CWRC) by Executive Order No. 12502 on January 28, 1985. The CWRC was made subject to the Federal Advisory Committee Act (FACA). In early March 1985, the President appointed eight members to review the overall adequacy of the chemical warfare posture of the United States with particular emphasis on the question of whether the United States should produce binary chemical weapons. In its June 11, 1985, report the CWRC concluded that (1) modernization of the U.S. chemical weapon stockpile would not impede and would more likely encourage negotiations for a multilateral, verifiable ban on chemical weapons; (2) only a small fraction of the current stockpile has deterrent value, while the bulk of it is militarily useless and should be destroyed; (3) the proposed binary program would provide an adequate capability to meet our present needs and is necessary; and (4) any expectation that protective measures alone could offset the advantages to the Soviets from a chemical attack is not realistic.

The President delegated responsibility for supporting the CWRC to the Secretary of Defense. The Secretary recommended and the President selected the Deputy Assistant to the Secretary of Defense (Atomic Energy) (Chemical Matters) to serve as the Executive Secretary of the CWRC and to provide the Commission with such administrative services, facilities, staff, and other support services as might be necessary. The Executive Secretary, through the functional offices within the Office of the Secretary of Defense (OSD), provided a staff director, a staff manager, three technical consultants, two administrative officers, three secretaries, a legislative affairs consultant, a public affairs consultant and a writer as CWRC support staff. He also arranged for office space, travel, and other necessary support for the Commission.

The Federal Advisory Committee Act (FACA) requires that the agency head responsible for a review committee (the Secretary of Defense in this case) comply with certain administrative procedures to ensure that the committee's activities are visible to the Congress and the public. These procedures include (1) maintaining detailed minutes of meetings and other records that fully disclose the nature of activities, (2) designating a federal official to attend each meeting, (3) maintaining records that fully disclose the disposition of funds, and (4) publishing

advance notice of meetings in the Federal Register. We found that OSD did not follow these procedures for the CWRC.

RECORDS OF ACTIVITIES

Section 12 of the FACA requires agencies to keep records that fully disclose the nature and extent of advisory committees' activities. Section 10 of the FACA requires that detailed minutes be kept of each meeting and that they contain a record of attendance; a complete and accurate description of matters discussed and conclusions reached; and copies of all reports received, issued, or approved by the advisory committee. These requirements are intended to preserve accountability and provide a basis for others to review the process that brought the commission members to their conclusions.

CWRC records do not fully disclose the nature and extent of the Commission's activities. CWRC's records consisted of three boxes of documents containing 145 folders. The material was in no apparent order and was not indexed, except for a listing of classified documents. The bulk of the files consisted of studies, technical reports, and briefings on chemical warfare issues. Although OSD reported that 77 meetings were held, our research of CWRC records disclosed that they did not contain minutes of those meetings. Also, the CWRC files did not contain budget and financial reports, a correspondence file, work plans, working papers, progress or status reports, or notes of staff meetings. There were, however, some agenda for planned meetings and reports of field trips taken by Commission members.

OSD officials told us that they had planned to tape each meeting and have transcripts made from the recordings. However, they said the effort was discontinued after recording several meetings because the taping did not produce good results, transcription was time-consuming, and clerical resources were not available. The Executive Secretary said that he had asked for a stenographer to take shorthand notes of meetings, but that method was never used. We could not identify any additional efforts to provide minutes of meetings.

In addition, regulations governing federal records management (FPMR 101-11.4) require that advisory commission files be offered to the National Archives before the commission terminates. According to a National Archives representative, the CWRC files were never offered to the Archives. Instead, CWRC staff sent the records to the Army's chemical warfare school at Fort McClellan, Alabama, to be used as reference material by students at the school.

Our brief examination of the President's Blue Ribbon Commission on Defense Management (the Packard Commission) and the President's Commission on the Space Shuttle Challenger Accident (the Rogers Commission) indicated that their records provide more complete accounts of the commissions' activities. Their files were turned over to the National Archives, and the documents are organized and indexed. They contain detailed minutes of meetings and other documentation, such as budget and financial reports, correspondence, work plans, working papers, progress or status reports, and notes of staff meetings.

DESIGNATED FEDERAL OFFICIAL

Section 10 of the FACA requires that each advisory committee appoint a designated federal official to attend or chair each meeting. It also says that an advisory committee will not conduct any meeting except at the call of or with advance approval of that official, or hold any meeting in his absence.

We found no documentary evidence that the CWRC appointed a designated federal official, and none of the officials we spoke with had knowledge of one having been appointed. The Executive Secretary told us that he assumed he was the designated federal official by virtue of his position and that the CWRC Staff Director acted in his place at the meetings he did not attend. The Staff Director told us that, while he did not know whether the CWRC had a designated federal official, he believed that a federal official attended each meeting. Since we did not have minutes of meetings and did not know who was present, we could not determine whether anyone assumed the role of designated federal official at each CWRC meeting. Managers of both the Packard and Rogers Commissions told us they were aware of the requirement for a designated federal official and that one had been appointed.

DISPOSITION OF FUNDS

OSD was responsible for making funds available to pay for CWRC expenses and for fully disclosing the disposition of such funds. However, CWRC files did not contain financial and budget records, and we could not locate a central source for complete CWRC financial information.

OSD's Washington Headquarters Services, which is responsible for tracking costs of OSD component organizations, assigned a financial management code number to the CWRC to account for all CWRC costs. A summary report of charges to the CWRC code showed a total of \$71,586, consisting of personnel and travel costs.

In October 1985, after the CWRC was terminated, the General Services Administration asked OSD to prepare a report on CWRC costs for the President's annual report on federal advisory committees. The OSD staff member given the task to prepare the report was unable to locate a central source for the cost information. He used the \$71,586 cost estimate provided by Washington Headquarters Services and added an estimated cost of \$43,473 for telephones, rent, printing, employee benefits, and moving expenses. The total cost that he reported to the General Services Administration was \$115,059.

Our review disclosed that this estimate did not include a \$57,948 contract for technical studies and \$26,710 paid to consultants on the CWRC support staff. Adding these costs to the above estimate increases the estimated costs for the CWRC to approximately \$200,000.

In addition to not properly disclosing the disposition of funds, OSD violated the Federal Advisory Committee Act and other applicable statutory and regulatory provisions regulating lobbying and public affairs activities. OSD employed a legislative affairs consultant and a public affairs consultant in the course of providing administrative support for the Commission. Employment of such consultants was in violation of section 9(b) of the act which restricts federal advisory committees to solely advisory functions and prohibits committee members and staff from expressing policy views on matters under consideration by the committee. Additional details about these violations are in GAO Decision B-222758, June 25, 1986.

NOTICE OF MEETINGS

Section 10 of the FACA requires that timely notice of each advisory committee meeting be published in the Federal Register. Implementing regulations, by both OSD (DOD Directive 5105.18) and the General Services Administration (FPMR 101-6.10), require that a notice be published in the Federal Register at least 15 days before each meeting. The CWRC generally did not comply with this requirement. Both Rogers and Packard Commission officials said they generally complied with the notice-of-meeting requirement; however, one of them said that occasionally unforeseen circumstances made it necessary to call a meeting with less than the required amount of notice.

Because we could not locate CWRC records of meetings, we could not determine exactly how many meetings were held. OSD reported to the General Services Administration that 77 meetings were held, but OSD officials told us that number was based on the agenda for planned meetings and not on records of actual

meetings. Although it is difficult to define precisely what constitutes a meeting, our inspection of Federal Register notices of CWRC meetings indicates that 43 meetings were planned to occur on 20 separate days. We noted that 22 of these meetings were scheduled to occur before the notices were published. For 19 meetings, the notice was published less than 15 days before the planned date of the meeting. Two planned meetings had the required 15 days' advance notice.

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