



Federal Register

**Wednesday,
February 11, 2004**

Part VI

The President

**Executive Order 13328—Commission on
the Intelligence Capabilities of the United
States Regarding Weapons of Mass
Destruction**

Presidential Documents

Title 3—**Executive Order 13328 of February 6, 2004****The President****Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction**

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Establishment.* There is established, within the Executive Office of the President for administrative purposes, a Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction (Commission).

Sec. 2. *Mission.* (a) The Commission is established for the purpose of advising the President in the discharge of his constitutional authority under Article II of the Constitution to conduct foreign relations, protect national security, and command the Armed Forces of the United States, in order to ensure the most effective counterproliferation capabilities of the United States and response to the September 11, 2001, terrorist attacks and the ongoing threat of terrorist activity. The Commission shall assess whether the Intelligence Community is sufficiently authorized, organized, equipped, trained, and resourced to identify and warn in a timely manner of, and to support United States Government efforts to respond to, the development and transfer of knowledge, expertise, technologies, materials, and resources associated with the proliferation of Weapons of Mass Destruction, related means of delivery, and other related threats of the 21st Century and their employment by foreign powers (including terrorists, terrorist organizations, and private networks, or other entities or individuals). In doing so, the Commission shall examine the capabilities and challenges of the Intelligence Community to collect, process, analyze, produce, and disseminate information concerning the capabilities, intentions, and activities of such foreign powers relating to the design, development, manufacture, acquisition, possession, proliferation, transfer, testing, potential or threatened use, or use of Weapons of Mass Destruction, related means of delivery, and other related threats of the 21st Century.

(b) With respect to that portion of its examination under paragraph 2(a) of this order that relates to Iraq, the Commission shall specifically examine the Intelligence Community's intelligence prior to the initiation of Operation Iraqi Freedom and compare it with the findings of the Iraq Survey Group and other relevant agencies or organizations concerning the capabilities, intentions, and activities of Iraq relating to the design, development, manufacture, acquisition, possession, proliferation, transfer, testing, potential or threatened use, or use of Weapons of Mass Destruction and related means of delivery.

(c) With respect to its examination under paragraph 2(a) of this order, the Commission shall:

- (i) specifically evaluate the challenges of obtaining information regarding the design, development, manufacture, acquisition, possession, proliferation, transfer, testing, potential or threatened use, or use of Weapons of Mass Destruction, related means of delivery, and other related threats of the 21st Century in closed societies; and

- (ii) compare the Intelligence Community's intelligence concerning Weapons of Mass Destruction programs and other related threats of the 21st Century in Libya prior to Libya's recent decision to open its programs to international scrutiny and in Afghanistan prior to removal of the Taliban government with the current assessments of organizations examining those programs.

(d) The Commission shall submit to the President by March 31, 2005, a report of the findings of the Commission resulting from its examination and its specific recommendations for ensuring that the Intelligence Community of the United States is sufficiently authorized, organized, equipped, trained, and resourced to identify and warn in a timely manner of, and to support United States Government efforts to respond to, the development and transfer of knowledge, expertise, technologies, materials, and resources associated with the proliferation of Weapons of Mass Destruction, related means of delivery, and other related threats of the 21st Century and their employment by foreign powers (including terrorists, terrorist organizations, and private networks, or other entities or individuals). The Central Intelligence Agency and other components of the Intelligence Community shall utilize the Commission and its resulting report. Within 90 days of receiving the Commission's report, the President will consult with the Congress concerning the Commission's report and recommendations, and will propose any appropriate legislative recommendations arising out of the findings of the Commission.

Sec. 3. *Membership.* The Commission shall consist of up to nine members appointed by the President, two of whom the President shall designate as Co-Chairs. Members shall be citizens of the United States. It shall take two-thirds of the members of the Commission to constitute a quorum.

Sec. 4. *Meetings of the Commission and Direction of Its Work.* The Co-Chairs of the Commission shall convene and preside at the meetings of the Commission, determine after consultation with other members of the Commission its agenda, direct its work, and assign responsibilities within the Commission.

Sec. 5. *Access to Information.* (a) To carry out this order, the Commission shall have full and complete access to information relevant to its mission as described in section 2 of this order and in the possession, custody, or control of any executive department or agency to the maximum extent permitted by law and consistent with Executive Order 12958 of April 17, 1995, as amended. Heads of departments and agencies shall promptly furnish such information to the Commission upon request. The Attorney General and the Director of Central Intelligence shall ensure the expeditious processing of all appropriate security clearances necessary for the members of the Commission to fulfill their functions.

(b) Promptly upon commencing its work, the Commission shall adopt, after consultation with the Secretary of Defense, the Attorney General, and the Director of Central Intelligence, rules and procedures of the Commission for physical, communications, computer, document, personnel, and other security in relation to the work of the Commission. The Secretary of Defense, the Attorney General, and the Director of Central Intelligence shall promptly and jointly report to the President their judgment whether the security rules and procedures adopted by the Commission are clearly consistent with the national security and protect against unauthorized disclosure of information required by law or executive order to be protected against such disclosure. The President may at any time modify the security rules or procedures of the Commission to provide the necessary protection.

Sec. 6. *General Provisions.* (a) In implementing this order, the Commission shall solely advise and assist the President.

(b) In performing its functions under this order, the Commission shall, subject to the authority of the President, be independent from any executive department or agency, or of any officer, employee, or agent thereof.

(c) Nothing in this order shall be construed to impair or otherwise affect the authorities of any department, agency, entity, officer, or employee of the United States under applicable law.

(d) Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals.

(e) The Director of the Office of Administration shall provide or arrange for the provision of administrative support and, with the assistance of the Director of the Office of Management and Budget, ensure funding for the Commission consistent with applicable law. The Director of the Office of Administration shall ensure that such support and funding meets the Commission's reasonable needs and that the manner of provision of support and funding is consistent with the authority of the Commission within the executive branch in the performance of its functions.

(f) Members of the Commission shall serve without compensation for their work on the Commission. Members who are not officers or employees in the executive branch, while engaged in the work of the Commission, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in Government service (5 U.S.C. 5701 through 5707), consistent with the availability of funds.

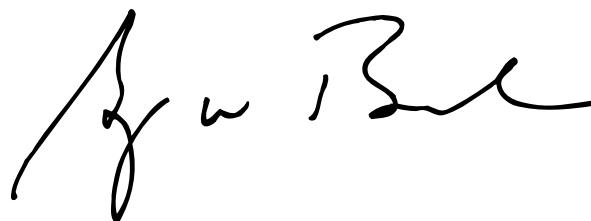
(g) The Commission shall have a staff headed by an Executive Director. The Co-Chairs shall hire and employ, or obtain by assignment or detail from departments and agencies, the staff of the Commission, including the Executive Director.

(h) The term "Intelligence Community" is given the same meaning as contained in section 3(4) of the National Security Act of 1947, as amended (50 U.S.C. 401a(4)).

(i) The term "Weapons of Mass Destruction" is given the same meaning as contained in section 1403(1) of the Defense Against Weapons of Mass Destruction Act of 1996 (50 U.S.C. 2302(1)).

Sec. 7. *Judicial Review.* This order is intended only to improve the internal management of the executive branch, and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

Sec. 8. *Termination.* The Commission shall terminate within 60 days after submitting its report.



THE WHITE HOUSE,
February 6, 2004.