

Report for Congress

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State and Local Preparedness for Terrorism: Selected Policy Issues

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Summary

While the federal government has resources at hand for responding to terrorist attacks, the proximity of state and local first responders insures they will almost always be the first to arrive at the site of an attack. For this reason, the preparedness of state and local governments has become a salient national issue.

The President's *National Strategy for Homeland Security*, issued in June 2002, proposes a number of measures to enhance state and local preparedness for terrorist attacks, particularly those involving weapons of mass destruction. Most of these measures, presently undertaken by FEMA and several other agencies, but will be transferred to the Department of Homeland Security (DHS), which Congress authorized in the Homeland Security Act of 2002 (P.L. 107-296). As the 108th Congress monitors the implementation of the new department, it might consider a range of issues, which include the following:

Amount and Uses of Federal Assistance—Observers have urged Congress to increase levels of financial and technical assistance available to states and localities. Some observers have also asked for more flexibility with federal funds.

Use of risk analysis—The process of risk analysis is generally used by risk experts to identify and evaluate options for reducing risks to human health and safety. The usefulness of risk analysis and the appropriate methodology, however, are frequently debated by emergency managers and analysts.

Federal training programs—State and local first responders generally rate federal terrorism training as effective and helpful. Many observers, however, cite a number of faults in federal training, such as lack of interagency coordination, insufficient quantity of course offerings, and lack of course information for state and local officials.

Mutual aid compacts—Mutual aid compacts are widely acknowledged to be an effective and efficient means of sharing emergency management resources among different jurisdictions. Federal support for mutual aid could better prepare states and localities for all disasters, including terrorist attacks.

Joint training exercises—Exercises can potentially improve emergency preparedness by allowing first responders from different agencies (e.g., law enforcement, fire and rescue, and public health) and different levels of government to become familiar with others' capabilities and practices.

Readers interested in analysis of state and local preparedness functions of the new Department of Homeland Security should see CRS Report RL31490, *Department of Homeland Security: State and Local Preparedness Issues*.

This report will be updated as circumstances warrant.

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Acronyms Used in this Report

CAR	Capability Assessment for Readiness
CEM	Comprehensive Emergency Management
COG	Metropolitan Washington Council of Governments
DHS	Department of Homeland Security
EMAC	Emergency Management Assistance Compact
EMAP	Emergency Management Accreditation Program
EMF	Emergency Management Function
EMS	Emergency Medical System
EMT	Emergency Medical Technician
EPA	Environmental Protection Agency
EPR	Emergency Preparedness and Response Directorate
FDNY	New York City Fire Department
FEMA	Federal Emergency Management Agency
NACO	National Association of Counties
NEMA	National Emergency Management Association
NGA	National Governors Association
NLC	National League of Cities
ODP	Office for Domestic Preparedness
OHS	Office of Homeland Security
USAMRIID	U.S. Army Medical Research Institute of Infectious Disease
WMD	Weapons of Mass Destruction

State and Local Preparedness for Terrorism: Selected Policy Issues

Introduction

While the federal government has resources at hand for responding to terrorist attacks, the proximity of state and local first responders insures that they will almost always be the first to arrive at the site of an attack.¹ For this reason, the preparedness of state and local governments has become a salient national issue.

The possibility of terrorist attacks involving weapons of mass destruction (WMD) presents a number of institutional and financial challenges to state and local officials. WMD may be defined as chemical, biological, radiological, and nuclear weapons, conventional explosives, or any device capable of causing mass casualties.² Adequately coping with a WMD attack requires first responders to have special equipment and extensive training. Such attacks would be more likely to overwhelm state and local response capabilities than attacks not involving WMD. Existing federal assistance programs focus on providing the necessary planning, equipment, training, and exercises.

Congress has been addressing issues of state and local preparedness since the September 2001 attacks, particularly in its debate over the new Department of Homeland Security (DHS).³ Legislative debate over the new department's role in state and local preparedness focused on the organization and responsibilities of the agencies transferred into the department—specifically the organization and responsibilities of the Federal Emergency Management Agency (FEMA) and the Justice Department's Office for Domestic Preparedness (ODP), which arguably offer the most preparedness assistance to states and localities. In its initial DHS proposal, the Bush Administration would have transferred to the Emergency Preparedness and Response directorate (EPR) nearly all federal agencies and offices with functions relating to state and local preparedness.⁴ The Administration specifically requested

¹For the purposes of this report, first responders include local, and sometimes state, law enforcement, fire service, emergency medical service, and hazardous materials personnel. Although there is arguably less consensus on whether public health personnel should be considered first responders, this report includes public health in the definition.

²Also see definition of weapon of mass destruction at 50 U.S.C. 2302(1).

³For more information, see CRS Report RL31490, *Department of Homeland Security: State and Local Preparedness Issues*, by Ben Canada.

⁴Examples of federal agencies offering preparedness assistance to states and localities, but
(continued...)

the transfer and consolidation of FEMA and ODP in this directorate, as part of its effort to consolidate first responder assistance programs.⁵

Congress, however, ultimately separated the functions of the ODP from FEMA and the other agencies with preparedness functions. The enacted version of the Homeland Security Act (P.L. 107-296) transferred ODP to the Border and Transportation Security directorate. This separation of agencies and functions was arguably the most debated issue related to state and local preparedness. It may also frame future debate over the implementation of the new department.

Congress is considering the FY2003 budget, in which the Bush Administration proposed a new \$3.5 billion block grant for states and localities called the “First Responder Initiative” and providing roughly \$1.5 billion in grants for bioterrorism preparedness.⁶ State and local officials have urged Congress to authorize the First Responder Initiative, as well as other existing grant programs, citing that America’s states and localities do not have the necessary resources to prepare for acts of terrorism.⁷

Scope of This Report. This report provides general information and analysis related to state and local emergency preparedness. It provides a brief overview of the present condition of state and local preparedness, analyzes selected preparedness issues, and presents some policy approaches for addressing those issues. Specifically, this report addresses risk analysis, federal training programs, mutual aid, and exercises. It does not, however, discuss related issues such as threat warning systems and information sharing. It is primarily concerned with the preparedness phase of emergency management. The other phases of response, recovery, and mitigation are briefly discussed, but are not this report’s subject. This report will be updated as circumstances warrant.

Elements of Preparedness

Preparedness is one of four phases of comprehensive emergency management (CEM). The other three phases are response, recovery, and mitigation. CEM offers emergency managers a framework for classifying and planning all emergency management activities. Preparedness involves a wide range of activities such as

⁴(...continued)

not proposed for transfer to the DHS, include the Federal Bureau of Investigation (FBI), which offers training to law enforcement officers, and the U.S. Army Medical Research Institute of Infectious Disease (USAMRIID), which offers response training to public health officials.

⁵H.R. 5005 (as introduced on behalf of the Administration), sec. 502. Also see Office of Homeland Security, *Department of Homeland Security*, (Washington: June 2002), p. 16. Available at: [<http://www.whitehouse.gov/deptofhomeland/book.pdf>], visited Dec. 19, 2002.

⁶For more information on the First Responder Initiative, see CRS Report RL31475, *First Responder Initiative: Issues and Options*, by Ben Canada.

⁷U.S. Conference of Mayors, “One Year Later, Cities Are Safer But Still Await Financial Assistance from Washington,” press release, Sept. 9, 2002.

assessing a community's vulnerabilities, developing flexible response plans, and training and equipping responders.⁸

Even before the terrorist attacks of September 2001, emergency managers and analysts were calling for a national strategy that emphasized preparedness of state and local governments, and integration of resources from all levels of government. The Gilmore Commission, a congressionally-authorized commission, reiterated this argument in its first report, calling for a national strategy that respects the traditional public safety role of states and localities and that clearly defines federal activities to support state and local responders.⁹

State and local officials, as well as the Federal Emergency Management Agency, advocate an "all-hazards approach" to emergency preparedness that stresses using existing institutions and resources to respond to all disasters, including acts of terrorism.¹⁰ Preparedness activities can incorporate the resources of local, regional, state, and federal agencies, as well as the medical community, relief organizations, and the private sector. Activities that comprise an effective preparedness strategy include:

- ! risk analysis;
- ! response capability assessment, improvement, and maintenance;
- ! emergency response planning;
- ! training and exercises; and
- ! incorporation of local, regional, state, and federal resources.¹¹

Inadequate preparation could lead to lack of a clear response structure, inefficient use of intergovernmental resources, and, ultimately, increased loss of life and property. Emergency planners typically assume that local resources would be overwhelmed in the event of a major terrorist attack and would require additional regional, state, and possibly, federal resources. Thus, the Gilmore Commission emphasized the need for intergovernmental coordination:

Response to an attack must be layered and sequential: Local entities will respond first, supplemented as necessary by State capabilities. When local capabilities

⁸William L. Waugh, Jr., *Terrorism and Emergency Management* (New York: Marcel Dekker, Inc., 1990), pp. 15-17.

⁹Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *First Annual Report to The President and The Congress*, Dec. 1999, pp. ix-x. The name "Gilmore Commission" comes from the name of the Chairman, former Governor James Gilmore of Virginia. The commission was charged with assessing the capabilities of federal, state, and local governments for responding to terrorist incidents involving weapons of mass destruction. Congress authorized the commission in Section 1405 of the National Defense Authorization Act for Fiscal Year 1999 (P.L. 105-261). See the commission web site at [<http://www.rand.org/nsrd/terrpanel/>], visited Dec. 19, 2002.

¹⁰U.S. Federal Emergency Management Agency, *Guide for All-Hazard Emergency Operations Planning*, SLG-101, Sept. 1996, p. iii.

¹¹Waugh, *Terrorism and Emergency Management*, pp. 29-31.

are exceeded, the response shifts to the State (perhaps multi-state) level. The Federal response should come only after local and State capabilities are exceeded.¹²

Observers generally encourage states and localities to incorporate private businesses in emergency planning. They argue that private sector participation can enhance preparedness by identifying potential hazards at business sites (such as hazardous materials) and clarifying the role and responsibilities of private entities during an emergency. State and local emergency managers can also be helpful to private businesses in developing and exercising evacuation plans.¹³

Indicators of Preparedness for Terrorist Attacks

Since the attacks of September 2001, government studies, witnesses at congressional hearings, and national surveys have suggested that states and localities are generally prepared to respond to emergencies, but need to modify existing response plans and develop resources to prepare for terrorist attacks involving WMD. This section provides an overview of the conclusions of some of these sources.

State Capability Assessment for Readiness. In 2001, FEMA published the results of its Capability Assessment for Readiness process (CAR) conducted in 2000. The CAR is a self-assessment conducted by states and territories, that evaluates capabilities in 13 emergency management functions (EMFs).¹⁴ FEMA concluded that, in general, states were effectively prepared to respond to disasters, although all states had certain functions in which they needed to improve.¹⁵ The results of the CAR indicate that states generally have adequate laws, administrative structures, financial structures, and communications to handle emergencies. The CAR also suggests, however, that states are generally less prepared in such functional areas as hazard identification and risk assessment, resource management, and logistics and facilities.

The CAR was intended to measure states' general capabilities to respond to disasters, but some of the attributes measured in the CAR process can be used to assess their capabilities to respond to terrorist attacks involving WMD. Four specific WMD-defense attributes reported by states are their capabilities to: 1) acquire appropriate equipment for WMD response; 2) address WMD attacks in emergency operations plans; 3) develop procedures for responding to WMD attacks; and 4) regularly exercise their WMD response plan. In all but the fourth attribute, the

¹²Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *Second Annual Report to The President and The Congress*, Dec. 2000, pp. 3-4, 23.

¹³William A. Anderson and Shirley Mattingly, "Future Directions," in Thomas E. Drabek and Gerard J. Hoetmer, eds., *Emergency Management: Principles and Practice for Local Government* (Washington: International City Management Association, 1991), p. 323.

¹⁴For more information, see: [<http://www.fema.gov/rrr/carnew.shtm>], visited Dec. 19, 2002.

¹⁵U.S. Federal Emergency Management Agency, *State Capability Assessment for Readiness*, Report to Senate Committee on Appropriations (Washington: Sept. 2001), p. vi.

national average was “marginally capable,” meaning that states generally had limited capacity and acknowledged they needed to make significant improvements. The national average for state capability to regularly exercise their WMD response plan, however, was “generally capable,” meaning that states generally maintained a baseline proficiency, but still needed to improve. Although the CAR reports a national average for all states, there were significant differences in capabilities among states in each measured attribute.¹⁶

Congressional Testimony. Congress held a number of hearings on state and local preparedness in the months following the September 2001 attacks. Amy E. Smithson of the Stimson Center asserted that states and localities across the nation already had many of the necessary resources to provide effective response to terrorist attacks involving WMD. “The bedrocks of chemical and biological disaster preparedness already exist at the local and state levels,” said Smithson, referring to the approximately 650 hazardous materials teams nationwide with specialists trained to respond to some WMD incidents. Smithson argued, however, that better intergovernmental coordination was needed, and that state and local capabilities need to be further enhanced.¹⁷

Other witnesses have testified about weaknesses they found in state and local preparedness. A primary concern has been the ability of state and local governments to respond to WMD incidents. Janet Heinrich of the U.S. General Accounting Office, for example, said, “[W]e found emerging concerns about the preparedness of state and local jurisdictions, including insufficient state and local planning for response to terrorist events....”¹⁸ A number of witnesses have expressed similar views and presented other concerns, including the lack of joint federal-state-local training exercises, the lack of standardized communications equipment, and the lack of private-sector involvement in emergency planning.¹⁹

National Surveys. Surveys of states and localities conducted shortly after the September 2001 attacks supported the belief that states and localities are generally prepared for emergencies, but may need to modify existing emergency management institutions and activities to prepare for acts of terrorism involving WMD. The National Emergency Management Association (NEMA) conducted surveys of state-

¹⁶Ibid., pp. 129-130.

¹⁷Statement of Amy E. Smithson, in U.S. Congress, House Committee on Government Reform, Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations, *A Silent War: Are Federal, State, and Local Governments Prepared for Biological and Chemical Attacks?*, hearings, 107th Cong., 1st sess., Oct. 5, 2001.

¹⁸Statement of Janet Heinrich, U.S. General Accounting Office, in Ibid.

¹⁹For examples, see statements in following hearings: House Committee on Government Reform, Subcommittee on Government Efficiency, Financial Management, and International Relations, *How Effectively are Federal, State and Local Governments Working Together to Prepare for a Biological, Chemical or Nuclear Attack?*, hearings, 107th Cong., 2nd sess., March 1, 2002; Senate Committee on Public Works and Environment, *First Responder Initiative*, hearings, 107th Cong., 2nd sess., March 12, 2002; Senate Committee on Appropriations, *Homeland Security*, hearings, 107th Cong., 2nd sess., April 10, 2002.

level preparedness following the September 2001 attacks. NEMA found that every state had a response plan and an emergency preparedness coordinating body in place before the attacks.²⁰ Many states, however, have since created new preparedness offices or coordinator positions, and others have created advisory panels to address terrorism preparedness.²¹

Surveys by the National League of Cities (NLC) and National Association of Counties (NACO) showed similar results at the local level. Before September 2001, the vast majority of cities and counties had disaster response plans in place. The surveys, however, revealed a disparity in preparedness between larger urban localities and smaller rural localities. Whereas approximately 80% of urban cities and urban counties addressed WMD attacks in their response plans, less than half of small cities and rural counties did so. This disparity also applied to terrorism training. Whereas approximately 57% of large cities had received terrorism training in the past year, approximately half as many small cities had received terrorism training.²²

In July 2002, The Office of Homeland Security (OHS) released its own survey of state and local actions for homeland security. The survey did not seek to evaluate preparedness, but to describe the activities states and localities are undertaking to enhance their preparedness. OHS reported that states have taken significant steps to update response plans and mutual aid compacts, improve information sharing, protect critical infrastructure, and prepare for biological terrorism. The office also recognized local governments for improvements in these areas, as well as increasing first responder capabilities, establishing relationships with the private sector, and fostering volunteerism.²³

Selected Policy Issues and Alternatives

Members of Congress, the Bush Administration, and observers have offered many proposals for improving state and local terrorism preparedness, which have raised a number of policy issues. This report considers the following selected issues:

²⁰Some states and localities have adapted response plans that were required in the Emergency Planning and Community Right-to-Know Act of 1986 (P.L. 99-499, Title III) to meet current needs. For more information on this requirement, see CRS Report RL30798, *Environmental Laws: Summaries of Statutes Administered by the Environmental Protection Agency*, coordinated by Martin R. Lee, p. 80.

²¹National Emergency Management Association, "Trends in State Terrorism Preparedness," Executive Summary, Dec. 2001, available at NEMA web site: [http://www.nemaweb.org/Trends_in_Terrorism_Preparedness/index.htm], visited Dec. 19, 2002.

²²National League of Cities, "Terrorism Preparedness Survey," Sept. 21, 2001; and National Association of Counties, "Counties Secure America: A Survey of Emergency Preparedness of the Nation's Counties," Dec. 2001.

²³White House Office of Homeland Security, *State and Local Actions for Homeland Security* (Washington: July 2002), pp. 1-2, 113-114, and 149-150. Available at: [<http://www.whitehouse.gov/homeland/stateandlocal/>], visited Dec. 19, 2002.

- ! amount and uses of federal assistance;
- ! risk analysis;
- ! federal training programs;
- ! mutual aid compacts; and,
- ! joint training exercises;

This is not a comprehensive list of policy issues relating to terrorism preparedness; rather, it is a discussion of state and local preparedness issues relevant to congressional oversight of the implementation of the Department of Homeland Security. These issues may also arise if the 108th Congress considers modifying or creating federal terrorism preparedness programs. For each selected policy issue there is a discussion below of policy alternatives that Congress could consider. These issues and options do not depend on each other, and Congress can factor in issues of budget, federalism, and other policy concerns in choosing the direction of federal policy. Each policy alternative is followed by a discussion of consequences that could result from its adoption.

Amount and Uses of Federal Assistance

Defining the Issue. Since the attacks of September 11, 2001, emergency managers and analysts have urged Congress to increase levels of financial and technical assistance to states and localities to enhance their preparedness for terrorist attacks. Although public safety is traditionally a state and local function, Congress may consider increasing assistance if it determines that the desired preparedness improvements could overwhelm state and local resources, interfering with their ability to provide basic services. It also may reconsider the range of eligible grant activities and examine the potential for state and local over-dependence on federal funds.

Amount of Funding Needed. In FY2001, Congress appropriated approximately \$367.5 million related to state and local preparedness for terrorism.²⁴ In FY2002, Congress provided roughly \$2 billion in assistance, most of which was appropriated in emergency supplemental appropriations (P.L. 107-117 and P.L. 107-206).²⁵

Some emergency managers and analysts contend that federal assistance should be significantly increased to help states and localities enhance their capability to respond to future terrorist attacks. Public health agencies, for example, have been consistently cited as needing more financial resources to adequately prepare for chemical and biological attacks. According to some emergency managers and

²⁴Figure based on CRS total of selected items listed in the U.S. Office of Management and Budget's *Annual Report to Congress on Combating Terrorism, 2001* (Washington: April 2001), pp. 21-24.

²⁵Figure based on CRS total of selected items in FY2002 enacted budget and emergency supplemental appropriations (P.L. 107-117, P.L. 107-206).

analysts, it is likely that existing funding levels in preparedness programs will not be enough to match demand by state and local responders.²⁶

In the months following the September 2001 terrorist attacks, state and local officials began requesting increases in federal funds. The National Governors Association (NGA) requested \$4 billion from Congress for states alone, arguing the funds were needed to improve bioterrorism preparedness, emergency communications, and security of critical infrastructure.²⁷ Representing the local level, the U.S. Conference of Mayors and National League of Cities have requested additional funding for cities and towns. They argue that committing more local resources to preparedness could interfere with cities' abilities to provide basic services.²⁸

The President's FY2002 budget proposed approximately \$5 billion for terrorism preparedness programs. Of these funds, \$3.5 billion were proposed for a new program called the First Responder Initiative.²⁹ States would have discretion in using the first 25% of funds, but would be required to pass on 75% of the funds to local governments or regional organizations. Recipients could use the funds for activities in four basic categories: emergency planning, training, equipment, and exercises. The 107th Congress did not authorize this program, but the Senate did consider S. 2664 (Jeffords), which closely paralleled the Administration's proposed grant program. Other similar proposals introduced in the 107th Congress include S. 2038/H.R.4059 (Clinton, McNulty) and S. 2077 (Collins).

The Administration's FY2003 budget request also included roughly \$1.5 billion to help public health agencies and hospitals better prepare for bioterrorist attacks.³⁰

Range of Eligible Activities. Whether or not Congress increases funding, it could re-evaluate the range of eligible activities for which states and localities can use federal funds. At present, all federal preparedness grants are categorical, meaning that recipient governments may only use the funds for specific activities. Although this affords recipients little flexibility, it allows Congress to target funds to selected needs. At present, Congress authorizes several categorical grant programs for such activities as emergency planning, training, equipment, and exercises.³¹

²⁶Greg Seigle, "'First Responders' to Terrorism Seek Federal Strategy, Equipment," *Government Executive*, Daily Briefing, March 6, 2002.

²⁷National Governors Association, "NGA Releases State Homeland Security Survey Results," press release, Dec. 2001.

²⁸See U.S. Conference of Mayors, *A National Action Plan for Safety and Security in America's Cities*, Dec. 2001, p. 8; and National League of Cities, "City Leaders Demand a Full Partnership in Homeland Security," press release, Dec. 6, 2001.

²⁹For more information on the proposed First Responder Initiative, see CRS Report RL31475, *First Responder Initiative: Issues and Options*, by Ben Canada.

³⁰U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2003*, Feb. 2002, pp. 17-20, 138-139, 315-317.

³¹For a listing of existing programs, see CRS Report RL31227, *Terrorism Preparedness: A* (continued...)

If Congress determined that states and localities needed greater flexibility in the use of funds, an alternative would be to consolidate the existing categorical programs into a block grant.³² The Administration's proposal for the First Responder Initiative is consistent with this policy option, since it would provide states and localities federal funds for a wide range of activities. An emergency preparedness block grant could give states and localities considerable discretion in committing federal resources to self-identified needs and to improve their unique preparedness plans. On the other hand, providing recipients with more flexibility could result in a smaller percentage of federal funds used specifically for terrorism preparedness.

Potential Consequences. One potential consequence of increasing federal assistance is that states and localities could become overly dependent on federal funds. Emergency management is traditionally a state and local activity supplemented by federal resources. Were Congress to increase funding for state and local preparedness, recipient governments might begin to regard federal grants as an enduring and predictable source of funding. If, in the future, Congress decided to decrease financial assistance for preparedness, states and localities could then have difficulty compensating for decreasing federal grants.

To address this concern, Congress could include a matching requirement or maintenance-of-effort provision in federal programs. Among other purposes, these provisions are intended to ensure that recipient governments do not become overly dependent on federal funds.³³ Alternatively, Congress could limit the use of funds to only short-term activities, such as training exercises and capital purchases, and prohibit the use of funds for salaries, maintenance, and other recurring expenses.

Were Congress to give states and localities more flexibility in their use of federal funds, it might impede its ability to oversee the efficiency and effectiveness of federal programs. Grant programs that give recipients a high degree of flexibility, such as block grants, are often hard to evaluate and can make congressional oversight difficult. On the other hand, categorical grant programs with a narrow range of eligible activities and specific objectives offer recipients little flexibility, but are easier to evaluate.³⁴

³¹(...continued)

Catalog of Federal Assistance Programs, coordinated by Ben Canada.

³²For more information on block grants, see CRS Report RL30818, *Block Grants: An Overview*, by Eugene Boyd and Ben Canada.

³³For more information on matching requirements and maintenance-of-efforts provisions, see CRS Report RL30778, *Federal Grants to State and Local Governments: Concepts for Legislative Design and Oversight*, pp. 6-8.

³⁴*Ibid.*, pp. 14-17.

Use of Risk Analysis³⁵

Defining the Issue. The Homeland Security Act and the President's *National Strategy for Homeland Security* indicate that risk assessment and analysis tools will be used in decision making. For example, the Act assigns risk analysis activities to the Homeland Security Institute, a new entity administered by the Secretary. The Act also appears to assign risk analysis, risk assessment, and risk management activities to other entities within the department.³⁶ The *National Strategy* gives risk assessment a prominent role in defending critical infrastructure, understanding and relaying intelligence reports, and setting priorities for resource allocation, all of which may have some effect on state and local preparedness efforts.³⁷ Finally, as indicated below, a number of existing federal programs encourage risk assessment and analysis by state and local governments for preventing and reacting to terrorism.

The policy questions addressed here are: Should Congress attempt to increase the use of risk assessment and analysis by state and local emergency officials and planners? If so, what is the best way for Congress to ensure that risk assessments and analyses help communities prepare for, and respond to, acts of terrorism?

Assessing, Managing, and Communicating Risks. *Risk analysis* is an umbrella term for the fields of risk assessment, risk management, and risk communication. *Risk assessment* seeks to define the probability an adverse event might occur and the consequences that might result from that event. The other two fields, *risk management* and *risk communication*, may include such activities as measuring the costs and benefits of risk reduction options; considering the moral, economic, political, psychological, and other implications of those options; and engaging in a dialogue with affected groups to better understand and inform others about the potential impacts of risk reduction decisions. Risk analysis generates controversy, both in the methods it uses and the decisions that result from those methods. Homeland security documents and discussions refer to risk assessment in particular, so it will be addressed here more extensively than risk management or risk communication.

Risk assessment methodology varies in government agencies and in private industry. Two common terms, *threat assessment* and *vulnerability assessment*, generally refer to specialized processes within risk assessment. While the specific

³⁵This section was written by Robert Buschmann, CRS Analyst in American National Government (7-8849). For more information on risk analysis, see CRS Report RS21348, *Risk Assessment in the National Strategy for Homeland Security*.

³⁶P.L. 107-296, sec. 312(c)(1); see sec. 312 (c) for general risk analysis and assessment duties of the Homeland Security Institute. The use of risk analysis and assessment is suggested, but not explicitly mentioned, in multiple places throughout the Act, including sections 201, 302, 507, 1001, and 1402.

³⁷Office of Homeland Security, *National Strategy for Homeland Security*, (Washington: July 2002), p. 29-35 (critical infrastructure), 55-58 (information sharing), and 63-66 (budget priorities). Some parts of the Strategy also suggest state and local grants may be based on risk-oriented assessments or evaluations. Available at [http://www.whitehouse.gov/homeland/book/nat_strat_hls.pdf], visited Oct. 17, 2002.

meaning of the two terms may vary depending on context, threat assessments tend to focus on the causes of adverse events, while vulnerability assessments measure how those events will affect specific populations, physical structures, or other entities. Risk assessment is generally used to describe a process that may include threat and vulnerability assessments and results in a characterization and description of risks.³⁸ In some areas, such as chemical safety, risk assessment is advanced, using time-tested models and calling upon volumes of information to address well-defined risks. In other areas, like terrorism preparedness, data are lacking and the models used to understand the risks have only recently been developed.

Despite its limits and variations, risk assessment can play a significant role in decision making and resource allocation in many organizations. Its advocates regard it as the rational use of science to better define problems, suggest answers to those problems, and save lives. Risk assessment's detractors counter that a lack of data, implicit value judgments, and fundamental uncertainties may render it "misleading at best and fraudulent at worst."³⁹

Policy Options. Congress has at least four options with regard to the use of risk analysis tools by state and local governments: do nothing; establish guidelines for performing risk assessments and analyses; condition grants for emergency responders upon state and local completion of risk assessments and analyses; and require state and local emergency responders to perform risk assessments and analyses.

Do Nothing. The issue may not require any action by Congress. The federal government does not currently monitor or regulate many state and local government uses of risk assessment and analysis. This option would allow state and local governments to develop and fine-tune their own methods of understanding and managing risks from terrorism. It also would require no additional work or spending by state and local governments, if they judge their current risk assessments and analyses adequate. This option may, however, result in dramatically different priorities among the states for handling different types of terrorism. Risk assessment and analysis methodology will also likely vary considerably, making comparisons of risk assessments and management strategies from different emergency preparedness entities difficult.

Guidelines Only. Congress could instruct one or more agencies to provide guidelines for risk assessment and analysis, either by regulation or by writing part or all of such guidance directly into law. Many guidance documents for risk assessment and analysis exist, including the Department of Justice's guidelines for chemical plant security⁴⁰ and the Environmental Protection Agency's website list of training

³⁸See CRS electronic terrorism briefing book page, "Assessing Risks," [<http://www.congress.gov/brbk/html/ebter225.html>].

³⁹Peter Montague, quoted in Sheldon Rampton and John Stauber, *Trust Us, We're Experts!* (New York: Tarcher/Putnam, 2001), p. 109.

⁴⁰U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, *Chemical Facility Vulnerability Assessment Methodology* (Washington: June 2002), (continued...)

materials for water infrastructure vulnerability assessments.⁴¹ This option would allow the federal government to establish guidelines for risk assessment and analysis while respecting state and local governments' control over the process. The agencies responsible for providing the guidelines could also share best practices by updating the guidelines periodically. In addition, a common methodology could help the federal government develop a better idea of what risks face different parts of the nation because results from one area could be more easily compared with one another. On the other hand, if the states and localities do not use the guidelines, the nation may still lack consistency among regional levels of preparedness and response to terrorism. Without an oversight tool, Congress would have no certain way to ensure state and local governments will follow its guidelines. Moreover, this option might lead to confusion about which plan to follow, if national advice does not match best practices in private industry or in other parts of the federal government. Many risk assessment and analysis methods exist, and the federal government might add to the confusion if principles and methods are not clear in its guidelines.

Requirements for Grants. Congress could require risk assessments and analyses from local and state governments as a requirement of emergency preparedness grants. This policy choice has been part of the federal preparedness grant process before: in 1999, the Department of Justice (DOJ) published an *Assessment and Strategy Development Tool Kit* which set requirements state and local governments had to satisfy if they were to receive aid for purchasing emergency preparedness equipment.⁴² Bills in the 107th Congress also used this approach: H.R. 5169, passed in the House on September 5, 2002, would have given the Environmental Protection Agency (EPA) the authority to grant money to wastewater treatment facilities to perform vulnerability assessments, provided the assessment met certain requirements.⁴³ Conditioning grants on risk assessments or analyses would increase the federal government's ability to compare risks across the nation and would allow the federal government to set clear priorities for state and local governments regardless of regional variations. It would also assure a minimum standard of risk awareness among those choosing to accept the grants. On the other hand, depending on the structure of the condition, this option could "freeze" risk assessment in legal or regulatory language—preventing states and localities from innovating, as all they would have to do is meet the requirements of the law or regulation to receive the grant. In addition, consensus on a single assessment and analysis method may prove to be a difficult achievement. Risk assessment and analysis methods are easiest to use when adverse events are fairly common and the consequences of such events are simple to predict. Terrorist attacks have had neither of these characteristics to date.

⁴⁰(...continued)

available at [<http://www.ncjrs.org/pdffiles1/nij/195171.pdf>], visited Dec. 19, 2002.

⁴¹Available at [<http://www.epa.gov/safewater/security/index.html#vulnerability>], visited Dec. 19, 2002.

⁴²Available online at [<http://www.ojp.usdoj.gov/odp/docs/assessment.pdf>], visited Dec. 19, 2002.

⁴³H.R. 5169 (as passed by the House), sec. 222.

Require Risk Assessments and Analyses. Congress could also require emergency preparedness risk assessments from state and local governments. Current homeland security legislation employs this method, providing federal funding for risk assessments. The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (P.L. 107-188), for example, requires all community water systems that serve more than 3,300 people to perform a vulnerability assessment, the requirements of which are mandated by legislation, with some discretion granted to the EPA Administrator.⁴⁴ S. 3730, the Senate counterpart to H.R. 5169, would have required vulnerability assessments of wastewater treatment plants in much the same way as P.L. 107-188. This requirement option would have the same advantages as requiring risk assessment and analysis as a condition of grants; it would also likely increase the possibility that state and local governments will comply (since risk assessment and analysis would be required under law, rather than be a condition of grants.) Similarly, this option has the same disadvantages as conditioning grants, with the additional drawback that it may draw resources away from other emergency preparedness activities that might have greater benefits than the assessment itself.

Some experts have recommended that terrorism be included in an “all-hazards” approach at least partially based on risk assessment and analysis.⁴⁵ This approach would ideally integrate terrorism with natural disasters currently addressed by emergency management organizations such as the Federal Emergency Management Agency. If Congress chooses to require risk assessment and analysis outright or as a condition of grants, it may be advantageous to consider whether the methodology is consistent with existing state and local emergency management plans. Terrorism risks may require their own separate assessments, but they might also be best understood and analyzed as variations of a natural disaster.

Potential Consequences. If Congress chooses not to require risk assessments and analyses as part of state and local emergency preparedness, it will leave state and local agencies considerable freedom to adapt to constantly evolving threats and vulnerabilities. And, responses across the country to terrorism emergencies will continue to be variable, rather than standardized. If Congress chooses to require risk assessment and analyses from state and local governments, either directly or as a condition of grants, it may help organize and coordinate state and local responses to terrorism while allowing the federal government to measure outcomes and outline best practices. On the other hand, mandatory risk assessments and analyses may burden state and local governments with unnecessary requirements that might discourage creativity and innovation in combating terrorism.

⁴⁴P.L. 107-188, sec. 401. See also CRS Report RL31294, *Safeguarding the Nation’s Drinking Water: EPA and Congressional Actions*, by Mary Tiemann, and CRS Report RS21026, *Terrorism and Security Issues Facing the Water Infrastructure Sector*, by Claudia Copeland and Betsy Cody.

⁴⁵See William Lee Waugh, Jr., “Managing Terrorism as an Environmental Hazard,” in *Handbook of Crisis and Emergency Management*, Ali Farazmand, ed. (New York: Marcel Dekker, 2001), pp. 659-675.

Federal Training Programs⁴⁶

Defining the Issue. The federal government presently offers a wide array of emergency management training, including preparedness for acts of terrorism to first responders and other public officials. Currently, FEMA and the Justice Department provide most terrorism-oriented training, and five other departments offer courses. Most courses address planning for, and responding to, WMD attacks.

Although state and local first responders generally rate federal training as effective and helpful, a number of observers argue that the current array of federal terrorism training needs to be improved to better prepare states and localities for possible terrorist attacks. Faults cited in federal training include lack of interagency coordination, insufficient quantity of course offerings, and lack of information for state and local officials.⁴⁷ The *National Strategy* proposed the development of a national training and evaluation system to be administered by the Department of Homeland Security. The Administration would build upon existing training resources, develop national standards for training, and evaluate regularly the effectiveness of federal training programs.⁴⁸ The Homeland Security Act consolidated into the new DHS Emergency Preparedness and Response directorate several agencies and offices that presently administer terrorism-oriented training, including FEMA. The Justice Department's Office for Domestic Preparedness will be transferred to the new DHS Border and Transportation Security directorate.⁴⁹ As Congress monitors the development of the DHS, it might examine the array of federal training programs and the current needs of first responders.

Current Training Programs and Observations. Training for terrorism preparedness is presently offered by seven federal departments and agencies—Defense, Energy, Health and Human Services, Justice, Transportation, the Environmental Protection Agency, and FEMA (see Table 1). FEMA and Justice (ODP) offer the most, and the widest array of, courses. FEMA generally conducts its training at the Emergency Management Institute and National Fire Academy, both located in Emmitsburg, MD.⁵⁰ The ODP offers training at its Center for Domestic Preparedness, located in Anniston, Alabama, as well as the Nevada Test Site (operated by the Department of Energy), and three state universities.⁵¹

⁴⁶Research assistance for this section was provided by Rita Henry, temporary detail to CRS from the Federal Emergency Management Agency through the 2003 Executive Potential Program.

⁴⁷U.S. Federal Emergency Management Agency, *Assessment of Federal Terrorism Preparedness Training for State and Local Audiences* (Washington: April, 2002), pp. 11-13.

⁴⁸Office of Homeland Security, *National Strategy for Homeland Security*, p. 45.

⁴⁹P.L. 107-296, sec. 430 and sec. 502.

⁵⁰For more information, see the Emergency Management Institute web site: [<http://training.fema.gov/emiweb/>] and National Fire Academy web site: [<http://www.usfa.fema.gov/dhtml/fire-service/nfa.cfm>], visited Dec. 19, 2002.

⁵¹Universities offering ODP-sponsored training include Louisiana State University, New
(continued...)

Terrorism-oriented training is generally available to a wide range of state and local officials, including fire service, emergency medical service, law enforcement, public health, public works, and elected officials. Some departments, however, target their training to selected audiences (*e.g.*, Department of Health and Human Services trains state and local public health officials). Some departments also offer training to private sector employees, such as hospital staff. Training is offered at varying levels of competency, ranging from “awareness level” to “operational level” to “incident command level.”

Table 1. Federal Training Programs for Terrorism Preparedness

Federal Department	Primary Target Audience	Primary Training Focus
Department of Defense	<ul style="list-style-type: none"> • military and civilian first responders 	<ul style="list-style-type: none"> • WMD response • incident command
Department of Energy	<ul style="list-style-type: none"> • state and local first responders • industry professionals • waste site personnel 	<ul style="list-style-type: none"> • radiological incident response
Department of Health and Human Services (selected programs to be transferred to DHS)	<ul style="list-style-type: none"> • state and local public health officials • hospital personnel • state and local first responders 	<ul style="list-style-type: none"> • biological and chemical incident response
Department of Justice (to be transferred to DHS)	<ul style="list-style-type: none"> • state and local first responders 	<ul style="list-style-type: none"> • WMD response • law enforcement techniques associated with terrorist attacks • bomb response
Department of Transportation	<ul style="list-style-type: none"> • hazardous materials response teams • transit system security officers 	<ul style="list-style-type: none"> • hazardous materials incident response • transit system security and preparedness
Environmental Protection Agency	<ul style="list-style-type: none"> • environmental response personnel • hazardous materials response teams • waste site personnel • state and local first responders 	<ul style="list-style-type: none"> • radiological incident response • hazardous materials incident response • air monitoring for hazardous materials

⁵¹(...continued)

Mexico Institute of Mining and Technology, and Texas A&M University. See the ODP web site for descriptions: [<http://www.ojp.usdoj.gov/odp/ta/training.htm>], visited Dec. 19, 2002.

Federal Department	Primary Target Audience	Primary Training Focus
Federal Emergency Management Agency (to be transferred to DHS)	<ul style="list-style-type: none"> • state and local first responders • emergency managers • elected officials 	<ul style="list-style-type: none"> • professional development for emergency managers • WMD response • incident command • fire service training • emergency medical service training • community emergency response

Source: U.S. Federal Emergency Management Agency, *Assessment of Federal Terrorism Preparedness Training for State and Local Audiences: Appendix A, Updated Compendium of Federal Terrorism Training* (Washington: April 10, 2002).

Since the terrorist attacks of September 2001, federal officials and other observers have examined the current federal system of terrorism-oriented training. At the request of the House and Senate Appropriations Committees, FEMA conducted an assessment of federal terrorism preparedness training.⁵² According to the report, released in April 2002, federal officials and training participants concurred that federal terrorism preparedness training is, on the whole, effective. Officials from all levels of government, however, identified several shortcomings, such as:

- ! lack of information on course content, registration, and other factors;
- ! overlaps in training curricula of different agencies;
- ! insufficient quantity of courses;
- ! lack of consistent operational standards and competencies;
- ! not all training needs addressed (such as training to use response equipment and crisis counseling for disaster victims); and
- ! costly travel requirements.⁵³

Studies by the U.S. General Accounting Office and the Gilmore Commission came to similar conclusions.⁵⁴ Regarding the quantity of courses, a December 2002 report on training opportunities also concluded that demand by first responders for training far exceeds the available course offerings.⁵⁵

⁵²U.S. Congress, Conference Committees, 2002, *Making Appropriations for the Department of Defense for the Fiscal Year Ending September 30, 2002 and for Other Purposes*, conference report to accompany H.R. 3338, H. Rept. 107-350, 107th Cong., 2nd sess. (Washington: GPO, 2002), p. 459.

⁵³FEMA, *Assessment of Federal Terrorism Preparedness Training*, pp. 11-13, 42-47.

⁵⁴U.S. General Accounting Office, *Combating Terrorism: Selected Challenges and Recommendations*, Report GAO-01-822 (Washington: GPO, Sept. 2001), pp. 5, 90-93; Gilmore Commission, *Third Annual Report*, p. 15.

⁵⁵Patrick O'Driscoll, "U.S. Anti-terror Training Camps Booked Solid," *USA Today*, Dec. 2, 2002.

In addition to these cited concerns, there has been considerable debate among policymakers about the focus of federal terrorism preparedness training. Some argue that terrorist attacks must be treated as criminal acts, and thus, first responders should be taught selected law enforcement techniques. The Justice Department's ODP provides such a training focus. On the other hand, the Bush Administration and some observers counter that training for terrorist attacks should not involve law enforcement techniques, which could detract from the rescue mission of some first responders. FEMA Director Joe Allbaugh has stated that as FEMA seeks to enhance its training programs, it will not incorporate law enforcement techniques.⁵⁶

Modify Federal Training Programs? Federal terrorism preparedness training could be modified through several policy approaches. The 107th Congress addressed concerns about the lack of interagency coordination in training programs by consolidating several agencies offering training into the DHS. Specifically, the Homeland Security Act instructed the Office for Domestic Preparedness to coordinate and supervise federal terrorism preparedness programs, including training.⁵⁷ The Act also transfers into the new department FEMA, in its entirety, and selected HHS preparedness programs.⁵⁸ Congress also addressed concerns about the lack of information about training programs. The Homeland Security Act created an Office for State and Local Government Coordination that will be responsible for providing state and local officials with training information.⁵⁹ A related action, the authorization of a National Clearinghouse on Emergency Preparedness was proposed in S. 2452.⁶⁰ The bill proposed a clearinghouse for preparedness information, including information on federal training.

Another approach would be to instruct the DHS to increase the quantity of training courses offered. FEMA's training study indicated that more training opportunities were needed due to the highly technical aspects of WMD response training and the high turnover rates of public safety personnel. Increasing the quantity of training could be done by providing federal departments additional resources for hiring more trainers and expanding facilities. Congress seemingly indicated a willingness to boost the capacity of federal training facilities when it appropriated an additional \$63 million to the ODP's five training facilities in FY2002 emergency supplemental appropriations.⁶¹

Another approach would be to boost the capacity of state-level training programs. Every state has an emergency management division that provides or

⁵⁶Joe M. Allbaugh, Director, U.S. Federal Emergency Management Agency, letter to Hon. F. James Sensenbrenner Jr., March 13, 2002. For more information on this issue, see "Focus of First Responder Training Programs" in CRS Report RL31590, *The Department of Homeland Security: State and Local Preparedness Issues*, by Ben Canada.

⁵⁷P.L. 107-296, sec. 430(c).

⁵⁸P.L. 107-296, sec. 502.

⁵⁹P.L. 107-296, sec. 801.

⁶⁰S. 2452, sec. 152.

⁶¹U.S. Congress, H. Rept. 107-350, p. 459.

coordinates training programs. This option would take advantage of existing training institutions and resources and could address state and local concerns about the cost of traveling to federal training facilities.

Potential Consequences. Enhancing training programs at the federal or state level could result in an uncoordinated approach to terrorism preparedness training. This consequence could be addressed by instructing the DHS to develop training standards that would be applicable to all federal training programs and federally-funded state programs. The development and institutionalization of training standards could lead to a specified level of proficiency in terrorism response nationwide. Such an initiative could also address the question of whether to offer terrorism preparedness training in a law enforcement context. Implementing training standards, however, could place a financial burden on state training programs, since they might have to develop new training programs and facilities, or purchase new equipment.

Enhancing federal terrorism preparedness training could divert federal resources from training for natural disasters. Some observers, including a former FEMA Director, have cautioned that enhancing terrorism preparedness should not come at the cost of natural disaster preparedness.⁶² Some House Committees also expressed this concern in their markups of the Homeland Security Act (H.R. 5005). The House Transportation and Infrastructure Committee, which oversees FEMA's operations, emphasized that FEMA should maintain its emphasis on preparing for, and responding to, natural disasters.⁶³

Another possible consequence is that enhancing federal training programs could prove prohibitively costly. The DHS and other agencies might require additional personnel, facilities, and other resources to improve the quantity and expand the range of training courses. Should Congress wish to expand federal training programs, it might examine the costs that would be required to reach the desired level.

Mutual Aid Compacts

Defining the Issue. Mutual aid compacts are agreements between different units of government to provide assistance in the event that an emergency overwhelms one government's response capability. They can enhance preparedness by pooling the resources of several governments and overcoming legal and administrative problems created by multi-jurisdictional boundaries.⁶⁴ Since state and local governments commonly participate in compacts, public officials have not identified

⁶²James Lee Witt and Associates, *Department of Homeland Security and FEMA* (Washington: 2002), unpublished.

⁶³U.S. Congress, House Committee on Transportation and Infrastructure, "Explanation of Manager's Amendment to H.R. 5005," 107th Cong., 2nd sess., July 11, 2002. Available at: [<http://www.house.gov/transportation/homelandsecurity/amendmentexplanation.html>], visited Dec. 19, 2002.

⁶⁴Waugh, *Terrorism and Emergency Management*, pp. 22-23.

mutual aid as a significant gap in federal policy, but some observers have urged Congress to support compacts and encourage states and localities to better utilize their compacts, and test them in training exercises. The *National Strategy for Homeland Security* suggests every locality can benefit from mutual aid:

Today, many geographic areas have little or no capability to respond to a terrorist attack using weapons of mass destruction. Even the best prepared states and localities do not possess adequate resources to respond to the full range of terrorist threats we face. Many do not yet have in place mutual aid agreements to facilitate cooperation with their neighbors in time of emergency.⁶⁵

The Homeland Security Act does not specifically address the concept of mutual aid. It does, however, instruct the new department to coordinate the preparedness activities of states and localities and ensure that they maintain adequate level of preparedness.⁶⁶

Types of Compacts. There are two main types of compacts: *regional* (or intrastate) and *interstate* compacts.

Regional Compacts. Emergency managers and analysts have suggested that regional compacts, in particular, can enhance preparedness. One specific benefit is that hazardous materials response teams, which are expensive to train and equip, can be shared by multiple localities. Another cited benefit is close proximity of resources. One analyst conducted an extensive series of interviews with state and local emergency managers and reported that, since proximity of resources is a crucial element in response, those interviewed generally relied on local and regional resources during a response. Some of the interviewees had “major reservations about the ability of federal and even state assets to arrive in sufficient time to impact the outcome of a chemical terrorist attack response.”⁶⁷ One state-level emergency manager summarized some of the benefits in his testimony before Congress: “In short, the regional approach gives us a flexible response capability, both regionally and nationally, which can adapt to catastrophic events as they occur and most effectively use the limited resources we share.”⁶⁸

Some state legislatures have created statewide mutual aid agreements, allowing all localities within the state to participate. California, for example, has had a statewide mutual aid system since 1950. All of the state’s 58 counties and most of the cities are signatories.⁶⁹ Other states have more recently created statewide systems in response to catastrophic natural disasters. In response to the devastation caused by Hurricane Fran in 1996, North Carolina’s state legislature created a state-wide

⁶⁵Office of Homeland Security, *National Strategy*, p. 42.

⁶⁶P.L. 107-296, sec. 102(c) and 502(1).

⁶⁷Smithson and Levy, *Ataxia*, p. 227.

⁶⁸Woodbury Fogg, Director, Office of Emergency Management, State of New Hampshire (on behalf of NEMA) in House Committee on Government Reform hearings, Oct. 5, 2001.

⁶⁹For more information, see California Governor’s Office of Emergency Services: [<http://www.oes.ca.gov/>], visited Dec. 19, 2002.

emergency management agreement. The agreement, “provides efficient and effective assistance among governments, faster reimbursement from the Federal Emergency Management Agency and covers liability and insurance concerns.”⁷⁰

Regional compacts can also be used in interstate regions. Localities in the Washington, D.C. metropolitan area, for example, have sought to strengthen their mutual aid agreements. This region faces a number of administrative obstacles to mutual aid due to the high number of federal, state, and local jurisdictions located in the region. In September 2002, the Metropolitan Washington Council of Governments (COG) proposed a new Regional Emergency Coordination Plan that outlines communication and coordination mechanisms that will be used in the event of a regional disaster. The COG’s plan seeks to incorporate the resources of its 17 member localities that lay in Maryland, Virginia, and the District of Columbia.⁷¹

Interstate Compacts. Interstate mutual aid compacts also have potential benefits. Although out-of-state resources might not have the close proximity of local resources, a state would require assistance if an emergency were to overwhelm its resources. The largest interstate mutual aid compact is the Emergency Management Assistance Compact (EMAC), which was developed in response to the devastation of Hurricane Andrew in Florida in 1992.⁷² Congress approved the compact in a joint resolution in 1996.⁷³ At the time of this writing, 47 states and two territories participate in EMAC.⁷⁴ The compact facilitates interstate assistance by establishing a clear procedure for requesting assistance, removing legal obstacles, providing for reimbursement of services, and providing a framework for flexible response.⁷⁵

EMAC on 9/11. The State of New York implemented EMAC after joining the compact on September 17, 2001. Even before officially joining the compact, however, the state had decided to use EMAC procedures and documentation to accept assistance from other states. According to one state emergency management official, New York placed 32 requests for personnel from other states to assist with response operations, donations management and recovery planning. All interstate

⁷⁰For more information, see North Carolina Division of Emergency Management: [<http://www.dem.dcc.state.nc.us/MUTAID/aidweb.htm>], visited Dec. 19, 2002.

⁷¹The Metropolitan Washington Council of Government’s Regional Emergency Coordination Plan is available at: [http://www.mwcog.org/homeland_plan/plan.htm], visited Dec. 19, 2002.

⁷²For more information on EMAC, see CRS Report RS21227, *Emergency Management Assistance Compact (EMAC): An Overview*, by Ben Canada.

⁷³P.L. 104-321; 110 Stat. 3877. Congress first supported interstate compacts for emergency response efforts in the Federal Civil Defense Act of 1950, in which it encouraged states to enter into “interstate civil defense compacts” (see P.L. 81-920; 64 Stat. 1249). This provision has been incorporated into the standing authority for the FEMA Director to aid federal and nonfederal emergency preparedness efforts (see 42 U.S.C. 5196(h) and 5196a).

⁷⁴Alabama, Alaska, Michigan, New Jersey, New York, Ohio, and Oregon have joined EMAC since September 11, 2001.

⁷⁵National Emergency Management Association, *Emergency Management Assistance Compact: Guidebook and Operating Procedures* (Lexington, KY: Aug. 2000), pp. 7-11.

assistance officially accepted by New York State was facilitated through EMAC or special arrangements with particular states using EMAC protocols.⁷⁶

EMAC was not formally implemented in the September 11 response to the Pentagon attacks. Arlington County, Virginia, responded to the disaster, however, with support from other Virginia jurisdictions that were activated through that state's intrastate mutual aid agreement. Arlington County also received support from nearby jurisdictions in Maryland and the District of Columbia.⁷⁷

Promoting Compacts? State governments could be required, as a condition of receiving federal grants, to organize and enhance regional mutual aid compacts to cover every locality in their state. While many localities throughout the United States are already signatories of regional compacts, some observers believe that localities too often rely on informal agreements and should formalize their compacts.⁷⁸ Some advocates assert that by formalizing compacts in a written contract, state and local governments can better prepare for response by eliminating potential legal and administrative obstacles. A written agreement can also help emergency managers by providing a menu of resources available for response.⁷⁹ Congress could promote such compacts, if it concurred in this view, by conditioning federal funds on a state's progress toward this goal.

Another option would be to provide funding directly to regional councils for the purpose of developing, improving, and exercising mutual aid compacts.⁸⁰ Such an approach was offered in H.R. 5461, the "Regional Comprehensive Emergency Preparedness, Coordination, and Recovery Act of 2002." The bill supported the use of regional councils of governments, arguing that they "... have the accountability and experience necessary to coordinate regional plans."⁸¹ Some proponents of mutual aid argue that the federal government distributes the vast majority of preparedness funds to states and localities, and very little to regional councils. These proponents maintain that councils could effectively use federal funds to develop mutual aid compacts, an activity some councils already undertake.⁸²

⁷⁶New York State Office of Emergency Management, telephone conversation, April 19, 2002.

⁷⁷Michael Cline, Virginia State Coordinator of Emergency Management, telephone conversation, April 19, 2002.

⁷⁸National Association of Counties, *Counties Secure America: A Survey of Emergency Preparedness of the Nation's Counties* (Washington: Dec. 2001), p. ii.

⁷⁹Howard D. Swanson, "The Delicate Art of Practicing Municipal Law Under Conditions of Hell and High Water," *North Dakota Law Review*, vol. 76 (2000), pp. 496-502.

⁸⁰The role of regional councils in emergency management and other public service areas is further discussed in RL31366, *The Role of Regional Councils in the Federal System: Policy Issues and Options*, by Ben Canada.

⁸¹H.R. 5461, sec. 2(4).

⁸²Alliance for Regional Stewardship, *Regional Emergency Preparedness Compacts: Safeguarding the Nation's Communities*, prepared by William R. Dodge, March 2002, p. 6. Available at: [<http://www.regionalstewardship.org/Documents/REPCSReport.pdf>], visited

Congress could provide funds to member states for EMAC exercises and simulations. It might also support research on ways of further incorporating the compact into federal response activities. Some proponents argue that increased use of interstate resources could relieve the strain on federal resources not only during response to terrorist attacks but all disasters. Congress might also consider requiring the three non-member states to join EMAC as a condition of receiving federal grants.

Congress and federal agencies have already shown some support for mutual aid. In FY2002 supplemental appropriations (P.L. 107-206), Congress authorized \$5 million for FEMA to develop mutual aid agreements.⁸³ Also, during the months of April and May 2002, FEMA sought input from first responders on possible requirements for the First Responder Initiative, including requiring states to join EMAC and requiring localities to participate in regional compacts.⁸⁴

Potential Consequences. In general, state and local officials have not suggested that there are adverse consequences to developing mutual aid compacts. Some officials, however, have expressed concern about issues of liability and reimbursement. Supporting the formalization and enhancement of mutual aid compacts, however, might impose an administrative and financial burden on states and localities. To address this situation, Congress might consider allowing grants to be used for compacts, or instruct federal agencies to increase the availability of technical and legal assistance in developing compacts. Opponents might argue, however, that such an instruction would divert federal resources from other state and local needs.

It is possible that distributing preparedness funds directly to regional councils for the purposes of developing compacts could be controversial. The role and responsibilities of regional councils vary considerably. In areas where regional councils are limited to a strictly advisory role, state and local officials might consider the development of mutual aid more appropriate for state and local governments. It is also possible that not all regional councils have the technical expertise to develop mutual aid compacts.

Joint Training Exercises

Defining the Issue. Joint training exercises are simulated response exercises that involve federal, state, and local responders. Joint training can improve emergency preparedness by allowing responders from different agencies (e.g., law enforcement, fire and rescue, and public health) and different levels of government

⁸²(...continued)
Dec. 19, 2002.

⁸³U.S. Congress, Conference Committees, 2002, *Making Supplemental Appropriations for Further Recovery From and Response to Terrorist Attacks on the United States for the Fiscal Year Ending September 30, 2002, and for Other Purposes*, conference report to accompany H.R. 4775, H.Rept. 107-593, 107th Cong., 2nd sess. (Washington: GPO, 2002), p. 183.

⁸⁴U.S. Federal Emergency Management Agency, "First Responder Initiative Grant Process," *Federal Register*, vol. 67, no. 73, April 9, 2002, p. 18621.

to become familiar with others' capabilities and practices. It can also give emergency managers and elected officials an opportunity to rehearse response scenarios using a range of intergovernmental resources. The *National Strategy for Homeland Security* supports exercises, proposing that the Homeland Security Department—

... establish a national exercise program designed to educate and evaluate civilian response personnel at all levels of government. It would require individuals and government bodies to complete successfully at least one exercise every year. The Department would use these exercises to measure performance and allocate future resources.⁸⁵

The Homeland Security Act directs the new Office for Domestic Preparedness to coordinate terrorism preparedness activities with states and localities, including exercises.⁸⁶ As Congress considers the Administration's *National Strategy*, as well as the functions of the DHS, it might consider the effectiveness of joint training exercises and whether additional federal resources should be dedicated to them.

Observations on Exercises. The New York City Fire Department (FDNY) commissioned a study of its response to the World Trade Center attacks on September 11, 2001. The report, completed by the McKinsey Company, offers some evidence of the importance of joint training. It noted that the challenges in the Department's response that day included:

- ! command and control of department personnel;
- ! informal mechanisms for requesting mutual aid; and,
- ! lack of coordination with the New York Police Department;

The McKinsey report ultimately recommended that the FDNY work with other city, state, and federal agencies to “Plan and execute joint training exercises and evaluate these exercises together to ensure that agencies can and will cooperate effectively during incidents, e.g., by operating under a unified command and control structure.”⁸⁷

Some advocates contend that joint training exercises can help overcome cultural barriers to coordination among different public safety communities (e.g., law enforcement, fire and rescue, public health) to coordinating emergency services. The Public Entity Risk Institute observed, in a report on the structure of emergency management organizations, that emergency managers from all public safety disciplines need to develop good interpersonal relationships and that joint training exercises were one means of developing such relationships.⁸⁸ Another Emergency

⁸⁵Office of Homeland Security, *National Strategy*, p. 45.

⁸⁶P.L. 107-296, sec. 430(c)(1).

⁸⁷McKinsey and Company, *Increasing FDNY's Preparedness* (New York, 2002), p. 104. Available at: [http://www.nyc.gov/html/fdny/html/mck_report/toc.html], visited Dec. 19, 2002.

⁸⁸Public Entity Risk Institute, *Characteristics of Effective Emergency Management Organizational Structures* (Fairfax, VA: PERI, 2002), pp. 55, 83. Available at: [<http://www.riskinstitute.org>], visited August 8, 2002.

Medical System (EMS) training manual suggests that each first responder group can benefit from joint training exercises:

The exercise plan is a series of objectives that each agency wants to test. Law enforcement may want to test perimeter security; fire/rescue may want to test mutual aid procedures. EMS objectives are triage, transportation, communications, or logistics ... [Exercises should] concentrate on testing management skills, communications, patient flow, unit coordination, inter-agency coordination, mutual aid, planning, or logistics.⁸⁹

In 2000, FEMA participated in over 200 state-level terrorism preparedness exercises each year. According to GAO in 2001, that number was up from approximately 25 in FY1996 and continued to rise. Many of the exercises are “tabletop exercises,” in which participants discuss how their agency would respond to a particular type of incident. Some exercises are more demanding “full-scale exercises,” which require responders to be deployed in the field and involve extensive evaluations.⁹⁰

In addition to these exercises, there have been a limited number of nationwide exercises in recent years involving emergency managers and elected officials from around the nation. In May 2000, for example, FEMA and the Office for Domestic Preparedness conducted the TOPOFF (top officials) exercise, the largest joint training exercise of its kind ever conducted. TOPOFF simulated WMD attacks in three locations across the nation. The Justice Department rated the exercise as a success, claiming to draw useful lessons from it.⁹¹ In congressional testimony, a spokesman for the National Emergency Management Association concurred with the Justice Department that the exercise was useful, but that similar exercises were necessary “to ensure that valuable federal, state, and local relationships and trust are built before a disaster.” The Justice Department is currently planning for TOPOFF II, which is scheduled to be conducted in FY2003.⁹²

While FEMA officials believe exercises are an essential component of preparedness, they argue that response to natural disasters can be just as valuable as WMD training exercises. Floods, hurricanes, and wildfires test the capabilities of federal, state, and local responders and may lead to improved response to terrorist attacks.

⁸⁹Hank Christen and Paul M. Maniscalco, *The EMS Management System: EMS Operations for Mass Casualty and High Impact Incidents* (Upper Saddle River, NJ: Prentice Hall, 1998), p. 137.

⁹⁰U.S. General Accounting Office, *Combating Terrorism: FEMA Continues to Make Progress in Coordinating Preparedness and Response*, GAO Report GAO-01-15, Mar. 2001, pp. 17-19.

⁹¹U.S. Department of Justice, Office for Domestic Preparedness web site, at [<http://www.ojp.usdoj.gov/odp/exercises/state.htm>], visited Dec. 19, 2002.

⁹²Statement of Woodbury Fogg, Director, Office of Emergency Management, State of New Hampshire, House Committee on Government Reform hearings, Oct. 5, 2001.

Despite these activities, some emergency managers and analysts believe that the federal government does not coordinate or fund enough joint training exercises, leaving a gap in federal policy. In a 2001 survey by the Gilmore Commission, which was fielded before September 11, 80% of responding localities stated they had not participated in an exercise with federal agencies. Additionally, a majority of localities reported that they had never held a WMD response exercise. The Gilmore Commission and other observers have encouraged Congress to instruct FEMA to coordinate more joint exercises and to provide more funding to states and localities to fund the exercises.⁹³

Support for More Exercises? Should Congress determine that more joint training exercises are needed, it could instruct the Department of Homeland Security to increase the number of exercises involving first responders and officials from all related fields, such as law enforcement, fire and rescue, and public health, and from all levels of government. Exercises could be structured to test and evaluate existing state and local response plans as well as mutual aid compacts. In the new department, such activities will most likely either be conducted by FEMA or ODP. The Homeland Security Act presently gives ODP (in the Border and Transportation Security directorate) responsibility for federal terrorism preparedness assistance programs. However, it also instructs the Emergency Preparedness and Response directorate, which contains FEMA, to ensure the preparedness of all state and local first responders.

The Bush Administration has emphasized exercises as a core component of its proposed First Responder Initiative. Developing and conducting exercises is listed as one of four basic activities for which recipients may use federal funds. The Office of Homeland Security states that the new program, if enacted, would "... supplement a coordinated, regular exercise program to improve response capabilities, practice mutual aid, and assess operations improvement and deficiencies."⁹⁴ During the 107th Congress, the Senate considered S. 2664, the First Responder Terrorism Preparedness Act of 2002. This bill paralleled the Administration proposal for a new grant program and would have authorized exercises as an eligible activity.⁹⁵

In the Emergency Response to Terrorism supplemental appropriation (P.L. 107-38; P.L. 107-117), Congress demonstrated support for more exercises, allocating roughly \$291 million to the Office for Domestic Preparedness (DOJ) for exercises. Congress authorized an additional \$14 million for exercises in the FY2002 supplemental appropriation (P.L. 107-206).⁹⁶

⁹³Gilmore Commission, *Third Annual Report*, pp. 18-21.

⁹⁴White House Office of Homeland Security, *Securing the Homeland*, p. 11.

⁹⁵S. 2664, sec. 630(c)(1)(G). For more information, see CRS Report RL31475, *First Responder Initiative: Policy Issues and Options*, by Ben Canada.

⁹⁶U.S. Congress, Conference Committees, 2002, *Making Appropriations for the Department of Defense for the Fiscal Year Ending September 30, 2002, and for Other Purposes*, conference report to accompany H.R. 3338, H. Rept. 107-350, 107th Cong., 2nd sess. (Washington: GPO, 2002), p. 417; And U.S. Congress, conference report to accompany (continued...)

Potential Consequences. Federal requirements for joint training exercises raise at least two concerns. First, holding exercises, particularly full-scale exercises, can be prohibitively costly for state and local governments. Second, some state and local officials might disapprove of requirements for terrorism-related exercises, arguing that such requirements would divert resources from preparing for more likely natural disasters to preparing for less likely terrorist attacks. This may be more likely in rural communities, or communities that consider themselves low risk. Should Congress decide to promote exercises, it might instruct FEMA to conduct exercises in such communities less frequently than in urban or high risk communities.

Conclusion

The unprecedented terrorist attacks of September 11, 2001 prompted policymakers at all levels of government to consider how to prepare for possible future attacks. In monitoring the creation of the Department of Homeland Security, as well as in considering any related proposals to modify federal preparedness programs, Congress might address any, or all, of these policy issues as it seeks ways to enhance state and local preparedness for terrorism. Should the 108th Congress consider legislation on state and local preparedness, it would have a wide range of options to consider.

Related CRS Products

CRS Report RS21302, *Assistance to Firefighters Program*, by Len Kruger.

CRS Report RL31490, *Department of Homeland Security: State and Local Preparedness Issues*, by Ben Canada.

CRS Report RS21227, *Emergency Management Assistance Compact (EMAC): An Overview*, by Ben Canada

CRS Report RL31475, *First Responder Initiative: Issues and Options*, by Ben Canada.

CRS Report RL31375, *Meeting Public Safety Spectrum Needs*, by Linda K. Moore.

CRS Report RL31670, *Transfer of FEMA to the Department of Homeland Security: Issues for Congressional Oversight*, by Keith Bea.

CRS Report RL31465, *Protecting Critical Infrastructure from Terrorist Attack: A Catalog of Selected Federal Assistance Programs*, coordinated by John Moteff.

⁹⁶(...continued)

H.R. 4775, H. Rpt. 107-593, p. 183.

CRS Report RL31263, *Public Health Security and Bioterrorism Preparedness and Response Act (P.L. 107-188): Provisions and Changes to Preexisting Law*, by C. Stephen Redhead, Donna U. Vogt, and Mary E. Tiemann.

CRS Report RL31125, *Recovery from Terrorist Attacks: A Catalog of Selected Federal Assistance Programs*, coordinated by Ben Canada.

CRS Report RS21348, *Risk Assessment in the President's National Strategy for Homeland Security*, by Rob Buschmann.

CRS Report RL31227, *Terrorism Preparedness: Catalog of Federal Assistance Programs*, coordinated by Ben Canada.

CRS Report RS20071, *United States Fire Administration: An Overview*, by Len Kruger.

CRS Report RS21073, *Urban Search and Rescue Task Forces: Fact Sheet*, by Ben Canada.

CRS Terrorism Briefing Book: [<http://www.congress.gov/brbk/html/ebter1.shtml>].