

Report for Congress

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State and Local Preparedness for Terrorism: Policy Issues and Options

Updated July 26, 2002

Ben Canada
Analyst in American National Government
Government and Finance Division

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Summary

Congress is presently debating how the structure and responsibilities of a new Department of Homeland Security will impact state and local preparedness for terrorism. Both H.R. 5005 and S. 2452 would consolidate state and local assistance programs into the new department. The department would also be responsible for coordinating the development and implementation of federal, state, and local response plans.

At present, Congress authorizes several federal agencies to conduct programs designed to help state and local responders enhance their preparedness for terrorist attacks, particularly attacks involving weapons of mass destruction. These programs cover a range of activities, including emergency planning; training and equipment; response to chemical and biological attacks; law enforcement; and public health.

As Congress determines the responsibilities of a new Homeland Security Department, it might consider a range of policy issues frequently mentioned by state and local emergency managers and analysts. Such issues include:

Amount and Uses of Federal Financial 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.

Preparedness Standards and Evaluation—Nongovernmental organizations working with FEMA have developed voluntary standards for emergency preparedness. Some observers have urged Congress to support the use of standards by instructing FEMA to undertake more research on preparedness standards and provide more assistance to governments attempting to meet standards.

Mutual Aid Compacts—Compacts are not uncommon, but some observers believe states and localities need to formalize and update their compacts. Compacts may present an opportunity for states and localities to share such costly resources as hazardous materials response teams and specialized equipment.

Joint Training Exercises—Observers argue that more joint training exercises are needed to adequately prepare local, state, and federal responders for terrorist attacks.

Communications Infrastructure and Other Equipment—First responders may need specialized equipment to respond to a terrorist attack, including an interoperable communications system.

Model Plans and Best Practices—The federal government could promote best practices in emergency management, as well as preparedness practices used at critical sites, such as chemical stockpile sites and nuclear power plants.

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Abbreviations Used in this Report

AHA	American Hospital Association
CAR	Capability Assessment for Readiness
CEM	Comprehensive Emergency Management
CSEPP	Chemical Stockpile Emergency Preparedness Program
DHS	Department of Homeland Security (proposed)
EMAC	Emergency Management Assistance Compact
EMAP	Emergency Management Accreditation Program
EMS	Emergency Medical System
EMT	Emergency Medical Technician
NACO	National Association of Counties
NEMA	National Emergency Management Association
NGA	National Governor's Association
NLC	National League of Cities
NFPA	National Fire Protection Association
OHS	Office of Homeland Security
WMD	Weapons of Mass Destruction

State and Local Preparedness for Terrorism: Policy Issues and Options

Introduction

While the federal government has resources at hand for responding to terrorist attacks, the proximity of state and local responders ensures 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.

In debating H.R. 5005 and S. 2452, Congress is considering how the structure and responsibilities of the new Department of Homeland Security (DHS) will address state and local preparedness for terrorist attacks.¹ Both the House and Senate bills propose incorporating federal preparedness programs into the DHS, including such activities as coordinating federal, state, and local response plans; providing technical assistance and training; and distributing financial assistance. In addition to these congressional proposals, the Bush Administration has requested \$37.7 billion for homeland security in the FY2003 budget, of which states and localities would be allocated \$3.5 billion in a new program called the “First Responder Initiative” and roughly \$1.5 billion for bioterrorism preparedness.²

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 not only preparedness activities, but all emergency management activities. Preparedness involves a wide range of activities such as developing flexible response plans, training and equipping responders, and assessing a community’s vulnerabilities.³

In the past, Congress has addressed the preparedness phase of emergency management by authorizing several training and grant programs designed to help states and localities enhance their response capabilities, particularly for terrorist attacks involving weapons of mass destruction (WMD). Existing federal programs

¹For more information of how the Department of Homeland Security proposals could affect state and local preparedness, see CRS Report RL31490, *The Department of Homeland Security: State and Local Preparedness Issues*, by Ben Canada.

²For more information on the First Responder Initiative, see CRS Report RL31475, *First Responder Initiative: Issues and Options*, by Ben Canada. Also see U.S. Office of Homeland Security, *Securing the Homeland, Strengthening the Nation*, Feb. 2002, pp. 10-11, available at [http://www.whitehouse.gov/homeland/homeland_security_book.html], visited Feb. 25, 2002.

³William L. Waugh, Jr., *Terrorism and Emergency Management* (New York: Marcel Dekker, Inc., 1990), pp. 15-17.

cover a range of activities, including emergency management and planning; training; equipment acquisition; law enforcement; and public health.⁴

The possibility of terrorist attacks involving weapons of mass destruction presents a unique challenge 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. Adequately coping with a WMD attack requires first responders to have special equipment and extensive training.⁵ Such attacks would be more likely to overwhelm state and local response capabilities than attacks not involving WMD. Since preparing for WMD attacks is an institutional and financial challenge for states and localities, federal assistance for preparedness currently focuses on providing the planning, equipment, and training necessary to respond to a WMD attack. Officials from all levels of government, however, have asked Congress to evaluate these assistance programs, suggesting they are administered in a disorganized fashion.⁶

As Congress debates the DHS legislation (H.R. 5005 and S. 2452) and the FY2003 budget, it might consider a range of policy issues identified by state and local emergency managers, including the lack of national preparedness standards, inadequate medical community preparedness, informal mutual aid compacts, lack of joint training exercises, inadequate communications systems and other equipment, and lack of model response plans. Consideration of some of these selected issues could assist Congress in determining suitable duties and responsibilities for the new Department of Homeland Security.

This report provides information and analysis intended to be useful to Congress on legislation and oversight related to state and local emergency preparedness. Specifically, it provides a brief overview of the present condition of state and local preparedness, analyzes selected issues in federal policy, and presents some of the policy options available to Congress in addressing those issues.

This report focuses on selected federal policies and activities that directly affect states and localities, or that, if enacted, would directly affect them. It is not a comprehensive discussion of all federal policy issues involved with state and local preparedness. Relevant issues not discussed in this report include intelligence sharing between federal agencies and state and local governments, and the role of specialized National Guard response units. The report does not directly address other phases of emergency management: response, recovery, and mitigation. Although these other phases are briefly discussed in the report, they are not its subject.

⁴For a listing of programs, see CRS Report RL31227, *Terrorism Preparedness: Catalog of Selected Federal Assistance Programs*, coordinated by Ben Canada.

⁵For the purposes of this report, “first responders” refers to local, and possibly state, public safety officials, including firefighters, emergency medical technicians, law enforcement officers, and public health officials.

⁶U.S. General Accounting Office, *Combating Terrorism: Selected Challenges and Related Recommendations*, GAO Report GAO-01-822, Sept. 2001, pp. 97-98.

Overview of Emergency Preparedness

Even before the 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 available at all levels of government. The Gilmore 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.⁷

The following section provides a brief overview of emergency preparedness practices that states and localities undertake to prepare for all disasters, including terrorist attacks. An understanding of these practices will be useful in analyzing the federal policy issues discussed in this report.

Preparedness Activities. State and local officials, as well as the Federal Emergency Management Agency (FEMA), advocate an “all-hazard approach” to emergency preparedness that stresses using existing institutions and plans to respond to all disasters, including acts of terrorism.⁸ 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 the following:

- ! risk assessment;
- ! response capability assessment, improvement, and maintenance;
- ! emergency planning;
- ! training and exercises; and
- ! incorporation of local, regional, state, and federal resources.⁹

One scholar of emergency management emphasizes the importance of risk assessment as part of preparedness for terrorism. It is necessary to identify persons, structures, or locations in a community that are potential targets. In addition, risk assessment can include assessing the vulnerability of a community’s infrastructure, such as power, water, communications, and transportation corridors.¹⁰

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,

⁷Advisory 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.

⁸U.S. Federal Emergency Management Agency, *Guide for All-Hazard Emergency Operations Planning*, SLG-101, Sept. 1996, p. iii.

⁹Waugh, *Terrorism and Emergency Management*, pp. 29-31.

¹⁰*Ibid.*, pp. 82-83.

which Congress created in 1998, emphasized the need for intergovernmental coordination:¹¹

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

Present Condition of State and Local Preparedness

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 may need to modify existing response plans and activities to better 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 September 2001, FEMA published the results of its Capability Assessment for Readiness process (CAR). The CAR is a self-assessment, conducted by states and territories in 2000, that evaluates capabilities in 13 emergency management functions (EMFs). 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.¹⁴ 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,

¹¹The Gilmore Commission was formally known as the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction. 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 Jan. 29, 2002.

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.

¹⁴U.S. Federal Emergency Management Agency, *State Capability Assessment for Readiness*, Report to Senate Committee on Appropriations (Washington: Sept. 2001), p. vi.

however, that states are generally less prepared in such EMFs as hazard identification and risk assessment, resource management, and logistics and facilities.

Although the CAR was intended to measure states' general capability to respond to disasters, some of the attributes measured in the CAR process can be used to assess their capability to respond to terrorist attacks involving WMD. Four specific WMD-defense attributes reported by states are their capability 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 national average was "marginally capable," meaning that states generally had limited capacity and needed to make significant improvements. The national average for states' 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.¹⁵

Congressional Testimony. Witnesses at congressional hearings have also testified on the present condition of state and local preparedness. Amy E. Smithson of the Stimson Center asserted that states and localities across the nation already had many of the necessary institutions and 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.¹⁶

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"¹⁷ A number of witnesses have expressed similar views and presented other concerns, including the lack of joint federal-state-local

¹⁵Ibid., pp. 129-130.

¹⁶Statement 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.

¹⁷Statement of Janet Heinrich, U.S. General Accounting Office, in House Committee on Government Reform hearings, Oct. 5, 2001.

training exercises, the lack of standardized communications equipment, and the lack of private-sector involvement in emergency planning.¹⁸

National Surveys. Surveys of states and localities conducted after the September 2001 attacks support 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-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.¹⁹ At least 14 states, however, have since created new preparedness offices or coordinator positions, and at least 18 states have created advisory panels to address terrorism preparedness.²⁰

Surveys by the National League of Cities (NLC) and National Association of Counties (NACO) show 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 urban localities and rural localities. Whereas approximately 80% of urban cities and counties address WMD attacks in their response plans, less than half of small cities and rural counties do so. This disparity also applies 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.²¹

¹⁸For 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.

¹⁹The Emergency Planning and Community Right-to-Know Act of 1986 (P.L. 99-499, Title III) required each state to create a State Emergency Response Commission, which, in turn, created emergency planning districts and designated Local Emergency Planning Committees. Although the state and local committees created by the act were designed to prepare communities for chemical accidents, states and localities may use them to prepare for all hazards. For more information, see CRS Report RL30798, *Environmental Laws: Summaries of Statutes Administered by the Environmental Protection Agency*, coordinated by Martin R. Lee, p. 80.

²⁰National Emergency Management Association, "Trends in State Terrorism Preparedness," Executive Summary, Dec. 2001, available at NEMA web site: [<http://www.nemaweb.org>].

²¹National League of Cities, "Terrorism Preparedness Survey," Sept. 21, 2001, available on the NLC web site at [<http://www.nlc.org>], visited Oct. 2, 2001; and National Association of Counties, "Counties Secure America: A Survey of Emergency Preparedness of the Nation's Counties," Dec. 2001, available on the NACO web site at [<http://www.naco.org>], visited Jan. 3, 2002.

Selected Policy Issues and Policy Options

Even before the September 2001 attacks, but especially since, emergency managers and analysts have identified several issues in federal policy on state and local preparedness. On the whole, they have not called for new emergency management institutions or response plans, but, rather, for enhancing current institutions and plans to better address the unique threat of terrorism. Some of the most frequently identified policy issues include:

- ! amount and uses of federal assistance;
- ! preparedness standards;
- ! preparedness of the medical community;
- ! mutual aid compacts;
- ! joint training exercises;
- ! communications systems and other equipment; and
- ! model response plans.

This is not a comprehensive list of policy issues, but, rather, a list of some of those most frequently cited by emergency managers and analysts. For each of these policy issues there is a discussion below of policy options that Congress could consider as it debates the functions of a new Homeland Security Department. These policy 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 option 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.²² In FY2002, Congress provided roughly \$1.8 billion in assistance, most of which was appropriated in the emergency supplemental appropriation (P.L. 107-38).²³ At the

²²Figure 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.

²³Figure based on CRS total of selected items in FY2002 enacted budget and emergency supplemental appropriations (P.L. 107-38).

time of this writing, Congress was considering providing additional funding for first responders through an FY2002 supplemental appropriation (H.R. 4775/S. 2551).

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 analysts, it is likely that existing funding levels in preparedness programs will not be enough to match demand by state and local responders.²⁴

The National Governor's Association (NGA) requested \$4 billion from Congress for states alone. NGA says states will use these funds to improve bioterrorism preparedness, emergency communications, and security of critical infrastructure.²⁵ Representing the local level, the U.S. Conference of Mayors and National League of Cities have requested additional funding for cities and towns, although not a specific amount. They argue that committing more local resources to preparedness could interfere with cities' ability to provide basic services.²⁶

The President's budget proposes approximately \$5.1 billion for state and local preparedness. Of these funds, \$3.5 billion are proposed for a new program called the First Responder Initiative.²⁷ The Administration proposes that FEMA administer this program, which would distribute funds to states using a population-based formula. 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. Arguably, S. 2664 (Jeffords) most closely parallels the Administration's proposed grant program. Other similar proposals include S. 2038/H.R.4059 (Clinton, McNulty) and S. 2077 (Collins).

The Administration's request also includes roughly \$1.5 billion to help public health agencies and hospitals better prepare for bioterrorist attacks.²⁸

²⁴Greg Seigle, "First Responders' to Terrorism Seek Federal Strategy, Equipment," *Government Executive*, Daily Briefing, March 6, 2002.

²⁵National Governor's Association, "NGA Releases State Homeland Security Survey Results," press release, Dec. 2001, available on the NGA web site at [<http://www.nga.org>], visited Jan. 3, 2002.

²⁶See U.S. Conference of Mayors, *A National Action Plan for Safety and Security in America's Cities*, Dec. 2001, p. 8, available on the USCM web site at [<http://www.usmayors.org>], visited Jan. 15, 2002; and National League of Cities, "City Leaders Demand a Full Partnership in Homeland Security," press release, Dec. 6, 2001, available on the NLC web site at [<http://www.nlc.org>], visited Jan. 8, 2002.

²⁷For more information on the proposed First Responder Initiative, see CRS Report RL31475, *First Responder Initiative: Issues and Options*, by Ben Canada.

²⁸U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2003*, Feb. 2002, pp. 17-20, 138-139, 315-317.

Range of Eligible Activities. Whether or not Congress increases assistance, 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 management and planning;
- ! training;
- ! equipment;
- ! law enforcement; and
- ! public health and medical community.²⁹

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.³⁰ 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.

Were Congress to expand the range of eligible grant activities, one approach would be to authorize recipients to use funds for hazard mitigation activities. Whereas preparedness involves planning, training, and equipping for disaster response, hazard mitigation involves reducing the possibility of disaster or reducing the extent of damage when a disaster strikes. Activities can include protective construction methods and altering public travel patterns. These activities complement preparedness activities and would assist governments in executing a comprehensive emergency management plan. At present, Congress authorizes FEMA to distribute mitigation funds through its Hazard Mitigation Grants Programs (HMGP) and Project Impact.³¹ The Bush Administration has proposed replacing the HMGP with a pre-disaster mitigation program that would be funded at \$300 million. In any mitigation program, Congress could clarify in legislation whether the grants could be used to address man-made as well as natural disasters.

Distribute Funds to States or Localities? Organizations representing state and local governments and emergency managers have generally approved of Administration and congressional proposals to increase funding to states and

²⁹For a listing of existing programs, see CRS Report RL31227, *Terrorism Preparedness: A Catalog of Federal Assistance Programs*, coordinated by Ben Canada.

³⁰For more information on block grants, see CRS Report RL30818, *Block Grants: An Overview*, by Eugene Boyd and Ben Canada.

³¹For more information, see FEMA's Project Impact web site: [<http://www.fema.gov/impact/>] and Hazard Mitigation Grants Program web site: [<http://www.fema.gov/mit/hmgrp/>], visited Jan. 15, 2002.

localities. Some organizations representing local governments, however, such as the U.S. Conference of Mayors (USCM) and National Association of Counties, argue that the majority of federal preparedness funds goes to states, leaving little for localities. These organizations have urged Congress to distribute preparedness funds directly to localities, arguing that local governments are better attuned to preparedness needs.³² A USCM survey showed that 87% of city mayors believed the channeling of federal funds through states would ultimately “hamper” city preparedness efforts.³³

Organizations representing states, however, contend that state coordination of federal assistance is crucial to improving preparedness. One state emergency manager, representing the National Emergency Management Association, testified that

[a]ll efforts to increase emergency management capacity building must be coordinated through the states to ensure harmonization with the state emergency operations plan, ensure equitable distribution of resources, and to synthesize resources [for mutual aid compacts].... Also, the Stafford Act, which governs the way disaster assistance is allocated, firmly and successfully uses states and Governors as the managers of federal disaster relief funds for local governments....³⁴

To address this concern, Congress could consult with state and local officials to determine what level of government could use federal resources most effectively and efficiently. Alternatively, it could instruct an appropriate federal agency, such as FEMA or GAO, to evaluate which level of government has the greatest need based on risk assessment and available financial resources.

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 a permanent 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

³²See statement of Mayor Martin O’Malley, Baltimore, Maryland, U.S. Congress, Senate Committee on Appropriations, *Homeland Security*, hearings, 107th Cong., 2nd sess., April 10, 2002.

³³U.S. Conference of Mayors, “Homeland Security: Mayors on the Frontline,” June 2000, available at: [http://www.usmayors.org/70thAnnualMeeting/madison_061302.asp], visited June 19, 2002.

³⁴Statement of Woodbury Fogg, on behalf of the National Emergency Management Association, U.S. Congress, Senate Committee on Public Works and Environment, *First Responder Initiative*, hearings, 107th Cong., 2nd sess., March 12, 2002.

provisions are intended to ensure that recipient governments do not become overly dependent on federal funds.³⁵ 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.³⁶

Preparedness Standards and Evaluation

Defining the Issue. Preparedness standards are specified activities and levels of competence that state and local responders are encouraged to achieve and maintain. The National Fire Protection Association (NFPA), National Emergency Management Association (NEMA), and FEMA have worked together to develop voluntary standards; encourage states and localities to assess their competency based on those standards; and undergo an accreditation process. Standards have been developed for most emergency management functions, from broad functions like response planning to specific functions like response to hazardous materials incidents. Some emergency managers and analysts have encouraged Congress to support nationwide standards, which they believe could better prepare states and localities for not only terrorist attacks but all emergencies.

Using Preparedness Standards and Assessments? Congressional support of such standards would use federal resources to better prepare existing state and local institutions for acts of terrorism. To improve preparedness in this manner, Congress could encourage states and localities to adopt standards and authorize FEMA to increase its financial and technical assistance available to states and localities for meeting preparedness standards. Congress could also direct FEMA to coordinate and support ongoing research on standards and assessments, which is currently being conducted by such nongovernmental organizations as the National Fire Protection Association. In 1999, the Gilmore Commission emphasized the need for research on preparedness standards, concluding,

... that national standards for responders at all levels, particularly for planning, training, and equipment, are critical, and [we recommend] that more emphasis be placed on research, development, testing, and evaluation in the adoption of such standards.³⁷

³⁵For 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.

³⁶*Ibid.*, pp. 14-17.

³⁷Gilmore Commission, *First Annual Report*, p. xi.

Existing Standards, Assessments, and Accreditation Processes

The *National Fire Protection Association's code 1600* establishes standards for emergency planning and capabilities. The code organizes the standards into 13 emergency management functions. It is designed to apply to any public or private entity that is required to develop emergency response plans by legislation, regulation, or agency policy. While the standards are voluntary, they are commonly accepted standards and would likely be the standards applied in any legal action involving a government's emergency response.

FEMA's *Capability Assessment for Readiness (CAR)* is a self-assessment process for state-level emergency management agencies to use to evaluate their own readiness. The CAR process is presently being pilot-tested for use at the local level. The process, which is organized around the same 13 emergency management functions used in NFPA 1600, is intended to help states develop strategic goals to improve their readiness. While governments can conduct the assessment on their own, they are encouraged to work with the FEMA regional office.

The *Emergency Management Accreditation Program (EMAP)*, which is administered by the National Emergency Management Association, is a structured, independent evaluation process that requires agencies seeking accreditation to undergo FEMA's Capability Assessment for Readiness (CAR) process. EMAP, however, requires documentation and outside review to ensure the agency has effectively undergone the self-assessment. Accreditation is meant to provide a means of identifying agencies that meet national standards and offers a strategy for continuous improvement.

An alternative would be to require standards by conditioning the receipt of federal funds on satisfying preparedness standards set forth by FEMA.³⁸ As long as funding was included that would allow the recipient to comply with the requirements, Congress would avoid creating an unfunded mandate.³⁹ Congress established a precedent for such action in Title VI of the Stafford Act, which provides funding to states for emergency preparedness activities. Under the Stafford Act, Congress gives the FEMA director discretion in placing conditions on the use of grant funds, including the method of purchase, quantity of items, and specifications of equipment. States must also satisfy specified requirements, such as developing statewide response plans, appointing a full-time state emergency manager, and reporting to the FEMA director on a regular basis.⁴⁰

FEMA officials, as well as Director of Homeland Security Tom Ridge, have expressed support for nationwide standards for all first responders. FEMA officials, however, have stated that any grant funds they award to responders should not be contingent on satisfying those standards. Rather, the Administration hopes to encourage states and localities to adopt common standards for equipment, training, mutual aid, and other aspects of emergency management. Bruce Baughman, Director

³⁸For more information on conditioning federal grants, see CRS Report 30778, *Federal Grants to State and Local Governments: Concepts for Legislative Design and Oversight*, by Ben Canada.

³⁹For more information on unfunded mandates, see CRS Report RS20058, *Unfunded Mandates Reform Act Summarized*, by Keith Bea and Richard S. Beth.

⁴⁰42 U.S.C. 5196(b).

of FEMA's Office of National Preparedness, states that he hopes the nationwide standards will be prepared by October 2002.⁴¹

The Administration proposal for the DHS (H.R. 5005) gives the department standard-setting responsibilities.⁴² The department's Chemical, Biological, Radiological, and Nuclear Countermeasures division (CBRN) would establish guidelines for state and local response to WMD events.⁴³ The Administration's report on the DHS states that the Emergency Preparedness and Response division (EPR) would "develop and manage a national training and evaluation system to design curriculums, set standards, evaluate, and reward performance in local, state, and federal training efforts."⁴⁴ The Senate bill, S. 2452, also addresses standard setting by authorizing a Directorate of Emergency Preparedness and Response to establish training and equipment standards for state and local first responders, as well as federal authorities.⁴⁵

Potential Consequences. Although FEMA and some nongovernmental organizations are working to implement voluntary standards, congressional support could expedite, and better ensure, that states and localities institutionalize the standards. One congressional witness testified on institutionalizing standards:

The prerequisite for institutionalization is standards, and all of the response disciplines—fire, police, EMS, hospital care providers—expressed an abundance of frustration over the absence of standards and protocols to guide them. Standards command the attention of rescue and healthcare personnel because they are the backbone of accountability.⁴⁶

While implementing standards could provide potential benefits, Congress might want to consider some potential effects that could result from requiring state and local preparedness standards.

Were Congress not only to support standards but also to require recipients of federal grants to meet specified standards, states and localities could be deterred from accepting federal funds. It is possible that some governments might decline federal preparedness grants and maintain their existing standards or other contingency plans since, even with federal assistance, meeting the standards could prove prohibitively expensive. This consequence might be more likely in smaller localities that rely

⁴¹Bridgette Blair, "FEMA Seeks National Rules for Emergency Response," *Federal Times*, March 11, 2001, p. 10.

⁴²For more information on the DHS and standard setting, see CRS Report RL31490, *The Department of Homeland Security: State and Local Preparedness Issues*, by Ben Canada.

⁴³H.R. 5005, sec. 301(4).

⁴⁴U.S. President (Bush), *Department of Homeland Security*, p. 11. H.R. 5005, however, does not contain an explicit provision that instructs the EPR division to conduct such activities.

⁴⁵S. 2452, sec. 103(a)(3)(F).

⁴⁶Statement of Amy Smithson, Ph.D., Henry L. Stimson Center, in House Committee on Government Reform, hearings, Oct. 5, 2001.

predominately on volunteer fire and rescue squads, which typically have limited financial resources, and in states and localities that believe they are at little risk of terrorist attacks. On the other hand, considering the nationwide salience of the issue of terrorism preparedness and the fact that many states are experiencing significant budget difficulties, states and localities would likely be eager for federal assistance.⁴⁷

Another potential consequence is that mandated standards could discourage innovative state and local planning. Each state has unique communities, which might require unique planning arrangements. If states and localities have flexibility in preparing for terrorist attacks and other emergencies, there is potential for innovative ideas that may benefit other areas. One state-level emergency manager addressed this issue in his testimony before the House Government Reform Committee:

We would ask that not only would the national strategy respect the principals of federalism, but would allow for state and local governments to address unique communities and constituencies. In particular, state and local governments are often called “laboratories of democracy” because of their ability to experiment quickly with policy and to find true best practices that would work for other state and local jurisdictions as well as the federal government.⁴⁸

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 resources of several governments and overcoming legal and administrative problems created by multi-jurisdictional boundaries.⁴⁹ Since state and local governments commonly participate in compacts, public officials have not identified it 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.

There are two main types of compacts: regional (or intrastate) and interstate compacts. Emergency managers and analysts have suggested that regional compacts, in particular, can enhance preparedness. One cited benefit is that response teams for chemical or biological incidents, which are expensive to train and equip, can be shared by multiple localities. 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, they 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

⁴⁷Jason White and John Nagy, “State Budget Snapshot Not a Pretty Picture,” Stateline.org, Oct. 12, 2001, available at [<http://www1.stateline.org>], visited Oct. 16, 2001.

⁴⁸Statement of Woodbury Fogg, Director, Office of Emergency Management, State of New Hampshire, in House Committee on Government Reform hearings, Oct. 5, 2001.

⁴⁹Waugh, *Terrorism and Emergency Management*, pp. 22-23.

time to impact the outcome of a chemical terrorist attack response.”⁵⁰ 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.”⁵¹

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 1992.⁵² Congress approved the compact in a joint resolution in 1996.⁵³ At the time of this writing, 46 states and two territories participate in EMAC.⁵⁴ 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.⁵⁵

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 assistance officially accepted by New York State was facilitated through EMAC or special arrangements with particular states using EMAC protocols.⁵⁶

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

⁵⁰Smithson and Levy, *Ataxia*, p. 227.

⁵¹Woodbury Fogg, Director, Office of Emergency Management, State of New Hampshire (on behalf of NEMA) in House Committee on Government Reform hearings, Oct. 5, 2001.

⁵²For more information on EMAC, see CRS Report RS21227, *Emergency Management Assistance Compact (EMAC): An Overview*, by Ben Canada.

⁵³P.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).

⁵⁴Alabama, Michigan, New Jersey, New York, Ohio, and Oregon have joined EMAC since September 11, 2001.

⁵⁵National Emergency Management Association, *Emergency Management Assistance Compact: Guidebook and Operating Procedures* (Lexington, KY: Aug. 2000), pp. 7-11.

⁵⁶New York State Office of Emergency Management, telephone conversation, April 19, 2002.

intrastate mutual aid agreement. Arlington County also received support from nearby jurisdictions in Maryland and the District of Columbia.⁵⁷

Use of Compacts? Congress could condition the receipt of federal grants on state governments organizing and enhancing regional mutual aid compacts to cover every locality in their state. While most localities throughout the United States are already signatories of regional compacts, some observers argue that states and localities rely too often on informal agreements and should formalize their compacts.⁵⁸ 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.⁵⁹ 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. 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.⁶⁰

Congress could also require, as a condition of receiving federal funds, those states that are not members of EMAC to join the compact. This could remove legal and administrative obstacles involved in inter-state mutual assistance to or from these states. Congress could provide funds to member states for EMAC exercises and simulations. It might also support research on ways of further incorporating EMAC 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.

The Office of Homeland Security has indicated that mutual aid will likely be incorporated in the national strategy on terrorism preparedness, which is expected to be released in the summer of 2002.⁶¹ Also, during the months of April and May, FEMA sought input from first responders on possible requirements for the First

⁵⁷Michael Cline, Virginia State Coordinator of Emergency Management, telephone conversation, April 19, 2002.

⁵⁸National Association of Counties, *Counties Secure America: A Survey of Emergency Preparedness of the Nation's Counties* (Washington: Dec. 2001), p. ii.

⁵⁹Howard 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.

⁶⁰Alliance 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 March 27, 2002.

⁶¹White House Office of Homeland Security, *Securing the Homeland, Strengthening the Nation* (Washington: Feb. 2002), pp. 10, 30.

Responder Initiative, including requiring states to join EMAC and requiring localities to participate in regional compacts.⁶²

Potential Consequence. State and local officials have not suggested that there are adverse consequences to developing mutual aid compacts. 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 preparedness grants to be used for compacts, or instruct federal agencies to increase the availability of technical 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 and different levels of government 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 conclusions of the After Action Report for the 1995 Oklahoma City bombing offer some evidence of the importance of joint training. The report noted that the response effort was initially weakened by the lack of coordination and communications from the responding local, state, and federal agencies.⁶³ Proponents believe training exercises can prevent the types of problems local, state, and federal emergency managers experienced in the early stages of response in Oklahoma City.

In 2000, FEMA participated in over 200 state-level terrorism preparedness exercises each year. According to GAO, that number is up from approximately 25 in FY1996 and continues to rise. Many of the exercises are "tabletop exercises," in which participants discuss how their agency would respond to a particular type of

⁶²U.S. Federal Emergency Management Agency, "First Responder Initiative Grant Process," *Federal Register*, vol. 67, no. 73, April 9, 2002, p. 18621.

⁶³Oklahoma Department of Civil Emergency Management, *After Action Report, Alfred P. Murrah Federal Building Bombing: Lessons Learned*, July 1996, available at [<http://www.onenet.net/~odcem/archives/fema/1048/aar-contrib.htm>].

incident. Some exercises are more demanding “full-scale exercises,” which require responders to be deployed in the field and involve extensive evaluations.⁶⁴

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 Department of Justice conducted the TOPOFF (top officials) exercise, the largest joint training exercise of its kind. 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.⁶⁵ In congressional testimony, a spokesman for NEMA (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 FY2002.⁶⁶

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.

Are More Exercises Needed? 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 survey by the Gilmore Commission, 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.⁶⁷

Should Congress determine more joint training exercises are needed, it could direct FEMA to coordinate more exercises involving first responders and officials 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. FEMA might also provide technical assistance to states and localities for exercise development. Such assistance could be useful to governments developing new exercises for WMD response or enhancing existing exercises.

⁶⁴U.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.

⁶⁵U.S. Department of Justice, Office for Domestic Preparedness web site, at [<http://www.ojp.usdoj.gov/odp/exercises/state.htm>], visited Nov. 23, 2001.

⁶⁶Statement of Woodbury Fogg, Director, Office of Emergency Management, State of New Hampshire, House Committee on Government Reform hearings, Oct. 5, 2001.

⁶⁷Gilmore Commission, *Third Annual Report*, pp. 18-21.

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."⁶⁸

Potential Consequence. There is arguably no adverse consequence in supporting joint training exercises. Holding exercises, however, particularly full-scale exercises, can be prohibitively costly for state and local governments.

Some state and local officials might disapprove of requirements for exercises. Officials in rural communities, for example, might argue that such requirements would divert resources from preparing for more likely natural disasters to preparing for less likely terrorist attacks. Should Congress decide to promote exercises, it might instruct FEMA to conduct exercises in rural communities (or communities considered "low risk") less frequently than in urban communities.

Communications Infrastructure and Other Equipment

Defining the Issue. According to emergency managers and analysts, the lack of a policy on emergency communications infrastructure is a significant issue in federal policy. Observers have stated that an interoperable communications infrastructure (a system that may be used by multiple jurisdictions) is one of the most urgent equipment needs. The president of the International Association of Fire Chiefs testified before Congress on this need, stating, "In major incidents where the responding emergency personnel involved come from different jurisdictions or agencies, each using its own radio frequencies, the issue of radio communications among and between responding agencies remains a challenge."⁶⁹ The American Hospital Association (AHA) has also emphasized the need for standardized communications infrastructure, stating, "Recent disasters have demonstrated that different organizations may use different media and/or different frequencies in their communications. Unable to communicate with one another, precious time can be lost at the start of a mass casualty incident."⁷⁰ The Bush Administration has frequently expressed its support for federal funding for interoperable communications. In June 2000, it stated that interoperable communications would be a top priority of the proposed Department of Homeland Security.⁷¹

Communications equipment, however, is not the only equipment need identified by observers. Emergency responders use a wide range of specialized equipment to

⁶⁸White House Office of Homeland Security, *Securing the Homeland*, p. 11.

⁶⁹Statement of Chief John M. Buckman III, president, International Fire Chiefs Association, in U.S. Congress, Senate Committee on Commerce, Science, and Transportation, Subcommittee on Science, Technology, and Space, *Homeland Security*, hearings, 107th Cong., 1st sess., Oct. 11, 2001.

⁷⁰American Hospital Association, *Hospital Preparedness for Mass Casualties*, p. 21.

⁷¹Office of Homeland Security, *Department of Homeland Security*, p. 12.

rescue and treat victims as well as protect themselves from injury. Obtaining and maintaining necessary equipment may enhance the ability of first responders to handle WMD incidents. Some have criticized the process by which states and localities obtain WMD-response equipment and the lack of standards for such equipment.

In June 1999, GAO reported that some states and localities were purchasing equipment for their jurisdictions without performing a risk assessment, which could identify the most useful equipment. In its report, GAO emphasized the importance of risk assessment, stating, "... [A] critical component of establishing and expanding programs to combat terrorism is an analytically sound threat and risk assessment using valid inputs from the intelligence community and other agencies." Concerning equipment standards, GAO observed that federal, state, and local governments have little consensus on the types of equipment needed to respond to WMD incidents.⁷²

Standardization of Emergency Communications Infrastructure.

Some observers have suggested that the federal government should assist states and localities in providing an interoperable communications system that would allow responders from multiple jurisdictions to communicate with one another as well as with out-of-state jurisdictions. Some emergency managers and analysts believe that the federal government should research cost-effective means of procuring common bandwidths and equipment that would enable multi-jurisdictional communication.⁷³ The Administration expects that roughly one-third of the First Responder funds, if authorized, would be used for communications equipment.⁷⁴ If Congress determines interoperable communications are a crucial asset, it could stipulate that communications equipment purchased with federal funds must meet a set of established standards.

Establishing Standards for Equipment. According to GAO, an FBI-directed commission has developed a list of standardized equipment for response to WMD incidents that is intended to promote standardization among responders at all levels of government. The NFPA has also developed criteria for evaluating equipment. Both the FBI and NFPA lists are voluntary, leaving states and localities discretion in choosing equipment types, manufacturers, and quantities.⁷⁵

Congress could require states and localities receiving federal funds to purchase only equipment meeting specified standards. FEMA already has such authority in its existing grant programs. Title VI of the Stafford Act gives FEMA discretion in

⁷²U.S. General Accounting Office, *Combating Terrorism: Analysis of Potential Emergency Response Equipment and Sustainment Costs*, GAO report GAO/NSIAD-99-151, June 1999, pp. 1, 4-5.

⁷³For more information on this issue, see CRS Report RL31375, *Meeting Public Safety Spectrum Needs*, by Linda K. Moore.

⁷⁴White House Office of Homeland Security, *Securing the Homeland*, budget tables.

⁷⁵*Ibid.*, p. 4.

placing conditions on the use of grant funds, including the method of purchase, quantity of items, and specifications of equipment.⁷⁶

To improve the process by which equipment is selected, appropriate federal agencies might increase technical assistance to states and localities to conduct risk assessments. Assessments could help governments use federal funds more efficiently, since not every locality will need to obtain the highest-capability equipment. It is likely, however, that some communities do not have the administrative capacity to undertake their own risk analysis, and would seek additional federal resources.

Potential Consequence. Mandating equipment standards could prove costly to state and local governments even if additional federal resources were available. The acquisition and maintenance of specialized equipment, including new communications infrastructure, could pose a significant financial burden. This consequence may be more likely in smaller localities, or rural localities that rely predominately on volunteer fire and rescue squads. It is likely that any effort to standardize would need to consider the impact on such communities.

Model Plans and Best Practices

Defining the Issue. Many emergency managers and analysts believe promoting model plans and best practices in emergency preparedness would complement any other policy initiatives undertaken and could be beneficial to states and localities. This option arguably has no adverse consequences and also presents a cost-effective means of assisting states and localities.

Promote Best Practices. FEMA could expedite its role in identifying and promoting “model” state and local emergency plans that could serve as examples for others to follow. The Gilmore Commission recommended this policy option, citing several states that have developed excellent response plans that could be used as models for other states. The commission further suggested that FEMA and NEMA develop a model state plan that contained certain standard features, but remained flexible enough to fit individual states’ circumstances.⁷⁷

In addition to model response plans, Congress could emphasize “best practices” in areas such as regional mutual aid compacts, medical community preparedness, and joint training exercises. States and localities that have excelled in these activities could serve as examples for other governments across the nation. Observers of emergency management have called for Congress to support state and local efforts in these areas. NEMA, for example, has stated, “Interstate and intrastate mutual aid assistance must be recognized and supported by the federal government as an expedient, cost-effective approach to disaster response and recovery.”⁷⁸

⁷⁶42 U.S.C. 5196(b).

⁷⁷Gilmore Commission, *Second Annual Report*, pp. 24.

⁷⁸National Emergency Management Association, “White Paper on Domestic Preparedness,” (continued...)

The Senate proposal for the DHS would promote best practices. S. 2452 (Lieberman) proposes a national information clearinghouse that would be charged with collecting and distributing information on best practices in state and local emergency management. Under this bill, the clearinghouse would be maintained by the new Department of Homeland Security.⁷⁹

Preparedness activities undertaken in communities with special facilities, such as nuclear power plants and chemical stockpiles are also of interest to Congress. Since 1980, it has required all nuclear power plants to have emergency response plans as a condition of license.⁸⁰ The subsequent regulations list specific components for such plans, including:

- ! clear assignment of responsibilities to state and local response agencies;
- ! arrangements for mutual assistance;
- ! procedures for notifying government agencies and the public of emergency;
- ! means of controlling radiological exposure; and
- ! periodic exercises and evaluations of response capability.⁸¹

Congress also requires U.S. Army facilities with chemical stockpiles to have preparedness plans. Under the Chemical Stockpile Emergency Preparedness Program (CSEPP), these plans must not only incorporate the U.S. Army and FEMA, but also state and local response agencies. FEMA encourages CSEPP communities to take a comprehensive approach to planning for a chemical accident and develop plans that address the unique needs of each community. CSEPP communities typically test their preparedness plans in periodic exercises.⁸²

Because some of the potential dangers of a nuclear or chemical stockpile accident are similar to the dangers of a WMD attack (e.g., radiological exposure), activities in such communities with special facilities may be relevant to current efforts and help identify the most efficient and effective preparedness plans. Other states and localities could be encouraged to follow those examples as they prepare for potential WMD attacks.

Conclusion

The unprecedented terrorist attacks of September 11, 2001, have prompted policymakers at all levels of government to consider how to prepare for possible

⁷⁸(...continued)

October 1, 2001, available on the NEMA web site at [<http://www.nemaweb.org>].

⁷⁹S. 2452, sec. 402(b) and 402(c)(4). Also see CRS Report RL31490, *The Department of Homeland Security: State and Local Preparedness Issues*, by Ben Canada.

⁸⁰P.L. 96-295; 94 Stat. 783.

⁸¹10 C.F.R. 50.47(b). For more information on this issue see the *CRS Electronic Briefing Book on Terrorism*, "Nuclear Power Plant Emergency Response," by Mark Holt, available at [<http://www.congress.gov/brbk/html/ebter138.html>].

⁸²For more information, see FEMA's CSEPP web site at [<http://www.fema.gov/pte/csepp1.htm>], visited Dec. 13, 2001.

future attacks. Congress might address any, or all, of these policy issues as it seeks ways to enhance existing emergency response institutions and plans to better prepare for future attacks. Should Congress consider legislation on state and local preparedness, it would have a wide range of options to consider.

Related CRS Products

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

CRS Report RL31510, *Proposed Transfer of FEMA to the Department of Homeland Security*, by Keith Bea.

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

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

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

CRS Report RL31125, *Recovery from Terrorist Attacks: A Catalog of Selected 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>].

Appendix: State and Local Preparedness Bills

This appendix lists bills introduced in the 107th Congress specifically related to state and local emergency preparedness. The title, sponsor, and a description of the provisions relating to state and local preparedness are provided for each bill. Bill provisions not directly related to state and local preparedness have been omitted.

National Strategy Proposals

H.R. 525 (Gilchrest). Preparedness Against Domestic Terrorism Act of 2001. Bill establishes the President's Council on Domestic Preparedness and requires it to establish voluntary minimum guidelines for preparedness programs.

H.R. 1292 (Skelton). Homeland Security Strategy Act of 2001. Bill directs the President to develop a comprehensive strategy for homeland security under which federal, state, and local government organizations coordinate and cooperate to meet security objectives. It directs the President to conduct a comprehensive threat and risk assessment to identify specific homeland security threats and implement a resulting strategy as soon as practicable.

H.R. 3026 (Gibbons). Office of Homeland Security Act of 2001. Bill establishes the Office of Homeland Security within the Executive Office of the President. Among other activities, the bill establishes a center within the office to disseminate information learned from homeland security exercises.

H.R. 5005 (Armev). Homeland Security Act of 2002. Bill was introduced on behalf of the Administration. It establishes a new Department of Homeland Security, which would, among other things, consolidate training and financial assistance programs for state and local governments into a single department.

S. 1449 (Graham); H.R. 3078 (Hastings). To establish the National Office for Combating Terrorism. Bill proposes a National Office for Combating Terrorism within the Executive Office of the President. The new office will develop a National Terrorism Prevention and Response Strategy and coordinate its implementation. The office will also oversee state and local government programs and activities as part of the strategy.

S. 1453 (Smith). Preparedness Against Terrorism Act of 2001. Bill establishes an Office of National Preparedness within FEMA. Instructs the executive director to develop a national strategy for terrorism preparedness and provide technical assistance to state and localities.

S. 2061 (Bond). National Response to Terrorism and Consequence Management Act of 2002. Bill authorizes FEMA to coordinate the preparedness efforts of states and localities. In doing so, FEMA would provide technical assistance and grants. Bill would also provide more funding for Urban Search and Rescue task forces and provides for removal of civil liability barriers that prohibit donations of equipment to responder units.

S. 2452 (Lieberman); H.R. 4660 (Thornberry). National Homeland Security and Combating Terrorism Act of 2002. Bill establishes a Department of National Homeland Security, which, among other duties, would be charged with coordinated emergency preparedness among federal, state, and local governments.

Block Grants

S. 2038 (Clinton); H.R. 4059 (McNulty). Homeland Security Block Grant Act of 2002. Bill would designate FEMA to administer a block grant for a wide range of homeland security activities. Funds would be distributed using a population-based formula. Qualifying metropolitan cities and urban counties would receive 70% of funds and states would receive 30%. As a condition of receiving funds, states would have to submit a statewide preparedness plan. Eligible activities would include emergency planning, developing mutual aid compacts, and procuring communications equipment, among others. Recipients would have to submit annual reports detailing the use of funds.

S. 2077 (Collins). Securing Our States Act of 2002. Bill proposes that FEMA distribute funds to states for such activities as enhancing infrastructure security, hiring additional law enforcement officers, and developing emergency notification systems. Funds would be distributed using a population-based formula. States would have to redistribute 75% of funds to local jurisdictions or regional organizations. States must submit a preparedness plan to receive funds and must report to FEMA.

S. 2664 (Jeffords). Bill would create a block grant that FEMA would distribute to states on a formula basis. The bill proposes a wide range of eligible activities focusing on emergency planning, equipment, training, and exercises, similar to the Administration proposal. It would require recipients to provide a 25% match and require states to distribute 75% of funds to local governments. States and localities would have to ensure that they would maintain pre-existing levels of expenditures on preparedness activities. States would also be required to submit annual reports to the FEMA Director and report to Congress on the outcome of preparedness exercises.⁸³

Grants for Preparing for Weapons of Mass Destruction

H.R. 2333 (Burr). National Disaster Medical System Act. Bill establishes the National Medical Disaster System. It requires such a system to be a coordinated effort by federal agencies working in collaboration with states. The bill also directs the HHS Secretary to plan HHS activities to assist state and local governments when state medical resources are overwhelmed in response to an emergency.

H.R. 3176 (C. H. Smith). Hazardous Agent Emergency Uniform Response Act. Bill directs the HHS Secretary to develop protocols for responding to public health emergencies resulting from the release of dangerous biological agents or chemicals.

⁸³S. 2664, sec. 5.

H.R. 3255 (Menendez). Bioterrorism Preparedness Act (BioPAct) of 2001. Bill creates grant programs for states and localities to increase hospital and provider capacity, training, and resources for treating bioterrorism and improve coordination, training, and equipment of emergency responders.

H.R. 3269 (Watson). To provide for the development of state medical disaster response plans regarding terrorist attacks that use biological or chemical weapons. Bill requires the HHS Secretary to develop criteria for state medical disaster plans, review state plans, and report to Congress.

H.R. 3458 (Shadegg). Bill directs the HHS Secretary to contract with a nonprofit organization for the collection and dissemination of WMD response material. Information would be available to state and local officials. Bill also creates an emergency medicine alert network for use at the federal and state level.

S. 1486 (Edwards); H.R. 3242 (Blagojevich). Biological and Chemical Weapons Preparedness Act of 2001. Bill establishes goals for first responder public health agencies to achieve in responding to biological or chemical attacks. It also authorizes block grants and competitive grants to help states and localities achieve goals and directs HHS Secretary to provide technical assistance and develop performance measures to evaluate state and local plans.

S. 1508 (Corzine). Biological and Chemical Attack Preparedness Act. Bill requires states, in consultation with local governments, to develop public health disaster plans for responding to biological or chemical attacks. Directs the HHS Secretary to establish standards, approve, and oversee implementation of the plans. It requires each plan to designate hospitals which will have procedures in place to treat residents in the event of an attack. Also requires the Secretary, through the director of the Office of Emergency Preparedness, to award grants to hospitals, healthcare providers, and State or local government entities to fund the implementation of preparedness plans.

S. 1520 (Bayh); H.R. 3153 (Blagojevich). State Bioterrorism Preparedness Act. Bill authorizes the HHS secretary to provide grants to states to improve preparedness for biological or chemical attacks. It requires states to submit preparedness plans to HHS, provides grants to states for training exercises that simulate terrorist attacks, and directs the HHS Secretary to develop a list of best practices of states in the area of WMD preparedness. The bill also proposes the development of a national emergency communications system.

S. 1765 (Frist); H.R. 3448 (Tauzin). Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (became P.L. 107-188). Law creates a block grant for states to develop bioterrorism response plans. Grant amounts based on population and states must submit a plan within six months after receiving funds.

Grants for Emergency Planning and Personnel

H.R. 3161 (Larson). Municipal Preparation and Strategic Response Act. Bill directs FEMA to provide grants to local governments and emergency response units to develop plans for coordinated response to emergencies, and to provide grants to

police and fire departments for counterterrorism training. The bill also requires each state to have an emergency official serve as a liaison to FEMA.

H.R. 3185 (Green); S. 1617 (Dodd). Staffing for Adequate Fire and Emergency Response Act of 2001. Bill proposes amendments to the Workforce Investment Act of 1998 authorizing the Secretary of Labor to make matching grants for up to 75% of the costs of projects to hire firefighters. States, localities, tribal organizations, and regional consortia of governments are eligible.

Grants for Equipment

H.R. 1547 (Andrews). To establish a grant program in the Department of Defense to assist states and local governments in improving their ability to prevent and respond to domestic terrorism. Bill would authorize the Secretary of Defense to make grants to states and political subdivisions to purchase response equipment.

H.R. 3025 (Forbes). To expand the program under which state and local governments may procure law enforcement equipment through the Department of Defense to include the procurement of counterterrorism equipment. Bill expands the program under which state and local governments procure law enforcement equipment through the Department of Defense to include the procurement of counterterrorism equipment.

Communications

S. 1631 (Jeffords). Amends the Robert T. Stafford Disaster Relief and Emergency Assistance Act to require the Director of the Federal Emergency Management Agency to conduct and report to specified congressional committees on a study to determine the resources needed for development of an effective nationwide communications system for emergency response personnel, which shall include a review of the use of the digital or analog spectrum as a key component to meeting the urgent communications needs of such personnel.

Intelligence Sharing

H.R. 3285 (Weiner); S. 1615 (Schumer). Federal-Local Information Sharing Partnership Act of 2001. Bill removes legal barriers to allow intelligence officials to share relevant information with state and local officials. Also requires state and local officials to follow guidelines for information usage as set by the U.S. Attorney General.

H.R. 3825 (Chambliss). Homeland Security Information Sharing Act. Bill instructs the President to develop procedures and criteria that federal agencies will use in determining what information to share with state and local officials, and when it should be shared. Also instructs federal agencies, including intelligence agencies, to coordinate efforts to provide states and localities with appropriate information.

National Guard

H.R. 3154 (Maloney). To require the Secretary of Defense to establish at least one Weapons of Mass Destruction Civil Support Team in each State. Bill requires the Secretary of Defense to establish at least one National Guard Civil Support Team (specializing in response to weapons of mass destruction) in each state as well as an additional team under the direction of the National Guard Bureau.

S. 1993 (Carnahan). A bill to authorize ... a Weapons of Mass Destruction Responder Training Facility.... Bill authorizes the Secretary of the Army to construct a training facility at Fort Leonard Wood in Missouri that would be used to train National Guard Civil Support Teams and other Department of Defense units.