

CRS Report for Congress

The Emergency Management Assistance Compact (EMAC): An Overview

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Summary

The Emergency Management Assistance Compact (EMAC) is an agreement among member states to provide assistance after disasters overwhelm a state's capacity to manage consequences. The compact, initiated by the states and coordinated by the National Emergency Management Association, provides a structure for requesting emergency assistance from party states. In 1996 Congress approved EMAC as an interstate compact (P.L. 104-321). EMAC also resolves some, but not all, potential legal and administrative obstacles that may hinder such assistance at the state level. EMAC also enhances state preparedness for terrorist attacks by ensuring the availability of resources for fast response and facilitating multi-state cooperation in training activities and preparedness exercises.

In June of 2008, a bill to reform mutual aid agreements for the National Capital Region (P.L. 110-250) was enacted to expand the types of organizations and agencies in the region that are authorized to enter into agreements and ease the requirements for agents and volunteers to respond to an incident. Legislation in the 110th Congress (S. 1452) would require EMAC to ensure that licensed mental health professionals with expertise in treating vulnerable populations are included in the leadership of the National Disaster Medical System and are available for deployment with Disaster Medical Assistance Teams.

This report will be updated as events warrant. This report is an update based upon a previous report written by Keith Bea, Specialist in American National Government.

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The Emergency Management Assistance Compact (EMAC): An Overview

Overview

The Emergency Management Assistance Compact (EMAC) is a congressionally ratified interstate mutual aid compact that provides a legal structure by which states affected by a catastrophe may request emergency assistance from other states.¹ Signatories to the compact resolve potential legal and financial obstacles that states might otherwise encounter as they provide assistance to the stricken state (or states). The compact sets out the responsibilities of the signatory states, provides authority (except the power of arrest) to officials responding from other states equal to that held by those of the affected state, assures reciprocity in recognizing professional licenses or permits for professional skills, and provides liability protection (in certain areas) to responders from other states. The compact requires that signatory states develop plans to evacuate civilian population centers. Reimbursement and compensation provisions are also included in EMAC. The National Emergency Management Association (NEMA), a professional association of state emergency managers, administers the compact.²

Legislative Actions

Historical Overview. Congress approved EMAC through a joint resolution passed in 1996.³ The U.S. Constitution generally prohibits states from entering into a compact with one another unless Congress consents.⁴ Since approval of the compact in 1996, the agreement has been the focus of little, if any, debate in Congress.

While it is a relatively recent innovation, antecedents for EMAC stretch back decades. The Federal Civil Defense Act of 1950 (CDA) authorized the Federal Civil Defense Administrator to “assist and encourage the states to negotiate and enter into interstate civil defense compacts” and undertake other actions that would “permit the

¹ For information on EMAC, see [<http://www.emacweb.org/>]. See also National Emergency Management Association, *Emergency Management Assistance Compact: Guidebook and Operating Procedures*, [<http://www.floridadisaster.org/EMIT/Accreweb/Documents/Operations/Logistics/EMAC%20Guidebook%202002/intro2002.pdf>], September 2002.

² See National Emergency Management Association website: [<http://www.nemaweb.org/>].

³ P.L. 104-321, 110 Stat. 3877.

⁴ Art. 1, Sec. 10, cl. 3 of the U.S. Constitution provides that “No State shall, without the Consent of Congress enter into any Agreement or Compact with another State”

furnishing of mutual aid for civil defense purposes in the event of an attack”⁵ After years of minimal funding, considerable opposition, and scant public support for civil defense activities, the CDA remained in the U.S. Code but had little application. In light of concerns raised after Hurricane Andrew devastated south Florida in 1992, Congress incorporated many of the provisions of the CDA into Title VI, “Emergency Preparedness,” of the Robert T. Stafford Disaster Relief and Emergency Assistance Act in 1994 (the Stafford Act).⁶ Similar to the authority given in the CDA, Title VI of the Stafford Act authorizes the FEMA Administrator to “assist and encourage the states to negotiate and enter into interstate emergency preparedness compacts” and to adopt reciprocal emergency preparedness legislation at the state level.⁷

Emergency management mutual aid and EMAC received mention in the final report of the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission), which noted that multi-jurisdictional mutual assistance compacts should be promoted; EMAC resolves mutual aid issues at the state, but not sub-state jurisdictional level. The commission also specifically recommended that Congress enact legislation to address “long-standing indemnification and liability impediments” to emergency response mutual aid in the National Capital Region of the District of Columbia and parts of Virginia and Maryland.⁸

Congress responded to this recommendation. The Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004 (P.L.108-458) authorizes state and local government officials in the National Capital Region (NCR), and federal officials, to enter into mutual aid agreements for emergency response, preparing for or recovering from an emergency, or training for such activities. The law also specifies that EMAC provisions are not affected by the legislation.⁹

Current Legislative Activity - 110th Congress. In April 2007 Senator Benjamin Cardin introduced legislation (S. 1245) to amend the IRTPA provisions relevant to the National Capital Region. On June 26, 2008, President Bush signed the legislation into law.¹⁰ Among other provisions, the statute gave assenting jurisdictions more flexibility over which personnel they can call on to help them give assistance. The statute also made all governmental agencies, authorities, and institutions within the region eligible to participate in mutual aid agreements.

⁵ P.L. 81-920, 64 Stat. 1249.

⁶ P.L. 103-337, 108 Stat. 3110-3107. A brief overview of the Civil Defense Act is presented in: William R. Cumming, “The Civil Defense Legacy,” *Journal of Civil Defense*, vol. 37, February 2004: pp. 3-5. Following the terrorist attacks of September 11, 2001, interest in the concept of civil defense has reemerged. See Amanda J. Dory, *Civil Security: Americans and the Challenge of Homeland Security* (Washington: The Center for Strategic and International Studies, 2003).

⁷ 42 U.S.C. 5196(h).

⁸ The National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* (Washington: GPO, 2004), p. 397.

⁹ P.L. 108-458, 118 Stat. 3840, 42 U.S.C. 5196 note.

¹⁰ P.L. 110-250

Another bill introduced in the 110th Congress, the Public Mental Health Emergency Preparedness Act of 2007 (S. 1452), would require EMAC to ensure that licensed mental health professionals with expertise in treating vulnerable populations are available for deployment with Disaster Medical Assistance Teams and are included in the leadership of the National Disaster Medical System.¹¹

State Actions

Many questions were raised about the capability of the federal and non-federal governments to manage the consequences of disasters after Hurricane Andrew destroyed much of the infrastructure in areas around Miami, Florida. Then-Florida Governor Lawton Chiles initiated discussions with other governors through the Southern Governors Association to develop a mutual aid agreement. These discussions concluded with agreement by 17 states, as well as the U.S. Virgin Islands and Puerto Rico, to adopt the *Southern Regional Emergency Management Compact* (SREMAC) in 1993.¹² In an effort to expand the emergency preparedness interstate compact nationwide, governors agreed to revise the initial compact as EMAC. By 1995, all states except California and Hawaii ratified the EMAC provisions, generally by adopting them in statutes.¹³ Currently, all fifty states, the District of Columbia, Virgin Islands, Puerto Rico and Guam, are signatory parties of the EMAC agreement.¹⁴

EMAC is not the only interstate compact adopted by the states to speed assistance after disasters occur. As noted above, for decades Congress has authorized executive branch officials to negotiate civil defense compacts. Many state codes still

¹¹ For more information on the National Disaster Medical System see CRS Report RL33579, *The Public Health and Medical Response to Disasters: Federal Authority and Funding*, by Sarah A. Lister.

¹² For background on the development of the SREMAC and EMAC, see William Kevin Voit, *Interstate Compacts & Agencies 2003* (Lexington, KY: The Council of State Governments, 2003), p. 102.

¹³ The governor of Hawaii is authorized to enter into mutual aid agreements with other states. See Hawaii Rev. Stat. §128-10(3),(4). Similarly, the governor of California is authorized to enter into reciprocal aid equipment compacts and mutual aid plans with other states. See Cal. Gov't. Code §8632. However, note that according to research conducted by the Council of State Governments, "at least some of the states that NEMA reports as EMAC members only list the [SREMAC] in their statutes, not EMAC." See *Interstate Compacts & Agencies 2003*, p. 102.

¹⁴ As noted above, Puerto Rico and the U.S. Virgin Islands were original signatory jurisdictions of the SREMAC. Two insular areas of the United States provide for mutual aid agreements, but are not participants of EMAC. If the government of Guam provides assistance outside the territory, the recipient state is to provide reimbursement pursuant to the applicable mutual aid agreement. See Guam Code Ann. Tit. 10 §65109. The governor of American Samoa is authorized to enter into an emergency assistance mutual aid compact with any state or U.S. possession, under specified conditions. See American Samoa Code Ann. §26.0108.

retain these emergency preparedness and civil defense compacts.¹⁵ In addition, a number of state legislatures have ratified other interstate compacts or agreements that expedite emergency assistance or military aid.¹⁶

The Process of Requesting Assistance through EMAC

EMAC provides that member states may request assistance when struck by a disaster, or when a disaster is deemed imminent. EMAC establishes a procedure for requesting assistance, and lists the responsibilities of requesting states and assisting states. Among other things, the emergency management director in a requesting state is responsible for:

- confirming that the governor has declared a state of emergency;
- creating a list of needed resources, including manpower, specialized skills, and equipment;
- alerting the EMAC standing response team that assistance may be needed; and,
- if necessary, contacting a specific state to alert appropriate authorities that a specific resource may be needed.

EMAC also lists the responsibilities of the emergency management director in an assisting state. These include:

- confirming that the state has the resources to match the request for assistance;
- notifying the governor of the specific resources that have been requested and receiving the governor's approval to deploy the resources; and,
- responding to the requesting state within two hours, specifying the extent to which the requesting assistance can be provided.¹⁷

Some resources are commonly found in states, such as mobile command vehicles, public assistance teams, and temporary shelters. Some specialized resources, such as cargo aircraft, donations management teams, and technical rescue teams, are found in relatively fewer states. EMAC provides emergency management

¹⁵ See *Interstate Compacts & Agencies 2003*, pp. 102-107.

¹⁶ Refer to the profiles of state emergency management and homeland security mutual aid provisions in the series of Congressional Research Service reports that are listed in CRS Report RL32287, *State Emergency Management and Homeland Security Statutory Provisions: A Summary*, by Keith Bea and Cheryl Runyon and Kae M. Warnock, consultants.

¹⁷ NEMA, *EMAC Guidebook*, pp. 56-57.

directors a menu of specialized resources that may be called upon during a disaster, should the need arise.

EMAC does not require states to provide assistance when it is requested. A provision explains that assisting states “may withhold resources to the extent necessary to provide reasonable protection for such state.”¹⁸

Legal and Financial Aspects

Articles V and VI of EMAC address professional qualifications and immunity from liability. A person from one state who renders assistance in another state and who holds a license, certificate, or other permit for professional, mechanical, or other skills, is considered under the EMAC provisions to be licensed, certified, or permitted to exercise those duties in the requesting state, subject to limitations or conditions set by the governor of the requesting state. Where officers or employees of one state render aid to another under EMAC, they are treated as agents of the requesting state for tort and immunity purposes. Neither the officers or employees of the state providing assistance, nor that state itself, would face liability for acts or omissions in good faith while rendering aid (including providing supplies and related equipment). Good faith in this context does not include willful misconduct, gross negligence, or recklessness. Also, under Article IV of EMAC, emergency forces are to enjoy duties, privileges, and powers (other than arrest power) comparable to those under the law of the state where assistance is being given,

EMAC also is intended to resolve the issue of reimbursement for loss, damage, or expenses incurred by a state that provides aid in response to a request for assistance. The compact establishes a standard process that guarantees such reimbursement to the states that lend assistance. It does not preclude states that render aid from assuming some or all of these attendant costs, or from loaning equipment or donating services. The states can also enter into supplemental agreements on the allocation of costs. Depending upon whether the President has made a disaster declaration, states rendering aid may be eligible for reimbursement not only from the state receiving assistance, but also from the federal government. At the same time, states remain primarily responsible for the pay and benefits of their own personnel.

¹⁸ *Emergency Management Assistance Compact*, amended January 31, 1995, Article IV.

Possible Issues for Congressional Consideration

In evaluating the need for further modifications to EMAC, Congress may elect to consider the following issues.

- States have varying levels of capability to respond to catastrophic disasters. In general, investigations on the response to Hurricane Katrina concluded that EMAC-sponsored assistance worked well and expeditiously. However, some problems have been identified. A survey conducted by the National Emergency Management Association (NEMA) on EMAC deployments made in response to Hurricanes Katrina and Rita provided insights on the benefits and challenges encountered.¹⁹ According to the survey, half of the issues (including communication problems, reimbursement, and personnel qualifications) associated with the EMAC deployments had not been resolved. These, and other types of deficiencies, may complicate mutual aid efforts in the future. Members of Congress might elect to evaluate the means by which the availability of EMAC assistance is incorporated in the evaluation of state capabilities.²⁰
- The *National Response Framework* issued by DHS sets out guidelines for coordination among federal and non-federal agencies. Federal response teams possess particular skills and resources associated with terrorist attacks. EMAC is intended to facilitate fast deployment of specialized response units, such as hazardous materials teams, across state lines. Congress might elect to consider legislative changes to ensure that state and federal response teams operate efficiently and coordinate operations.
- Emergency management practices, procedures, and policies rely upon a complex array of intergovernmental actions that derive in part from state authorities.²¹ EMAC is arguably one of the more important instruments for intergovernmental aid. The survey of EMAC deployments made after Hurricanes Katrina and Rita indicated that education and training in EMAC procedures need improvement.²² Federal policies provide significant direction and

¹⁹ “EMAC Post-Deployment Survey Results,” available at [<http://test.emacweb.org/?866>]. Hereafter cited as EMAC Survey Results.

²⁰ Further research and survey follow-up will be required to determine whether unresolved issues identified after Hurricane Katrina struck in 2005 remain matters of concern in 2008.

²¹ For a discussion of the federalist nature of emergency management policy see James Jay Carafano and Richard Weitz, “Learning from Disaster: The Role of Federalism and the Importance of Grassroots Response,” *Backgrounder*, The Heritage Foundation, March 21, 2006, available at [<http://www.heritage.org/Research/HomelandDefense/bg1923.cfm>].

²² EMAC Survey Results.

assistance in preparedness as well as response activities.²³ Congress might elect to consider whether the statutory provisions that authorize federal preparedness assistance might be amended to ensure that federal preparedness assistance is linked to implementation of EMAC. Also, Members might consider a call for the federal government “to nurture EMAC capabilities” and provide “a steady and reliable funding source that is not now in place.”²⁴

- Congress might elect to reconsider legislative provisions not adopted in the debate over IRTPA in the 108th Congress. Whereas the Senate version, adopted by Congress in IRTPA, focused on the National Capital Region, the House version of the legislation (H.R. 10) would have allowed authorized federal, state, and local representatives nationwide to negotiate agreements for the provision of services in emergencies or “a public service event.” The bill also would have authorized the provision of mutual aid services for all emergency management phases of emergencies or public service events, and would have allowed the participation of the parties in training exercises. The House bill also would have established that the operative liability provisions would be commensurate with those held by the state in which the respondents are normally operational, among other matters. Members of the 110th Congress may wish to evaluate whether similar authority concerning mutual aid agreements would be appropriate additions to the portfolio of federal mutual aid provisions in the wake of lessons learned from Hurricane Katrina and other disasters.
- S. 1452, currently pending before the 110th Congress, would establish the National Center for Public Mental Health Emergency Preparedness (NCPMHEP) to address mental health concerns associated with disasters. The Center would be tasked with coordinating and implementing the development and delivery of mental health services in the event of bioterrorism or other public health emergencies. If established as proposed, a question would arise: How would officials associated with the Center coordinate with the mental health capabilities of the states through EMAC

²³ For a summary of federal assistance programs, see CRS Report RL32696, *Fiscal Year 2005 Homeland Security Grant Program: State Allocations and Issues for Congressional Oversight*, by Shawn Reese.

²⁴ *2004 After-Action Report: Emergency Management Assistance Compact*, p. 13, available at [<http://www.emacweb.org/>], visited April 25, 2006.