**U.S. Department of Justice**
**Office of the Inspector General**
**Evaluation and Inspections Division**

# Review of the Department's Preparation to Respond to a WMD Incident

**May 2010**

**I-2010-004**

## EXECUTIVE DIGEST

The use of weapons of mass destruction (WMD), whether by a hostile nation, a terrorist group, or an individual, poses a potentially serious threat to the United States. One of the greatest concerns is that a WMD may fall into the hands of terrorists or that terrorists will develop their own WMD. WMDs include any device that is intended to cause death or serious bodily injury to a significant number of people through the release of toxic chemicals, disease organisms, or radioactive material.[1]

The federal government has taken various steps to prepare to meet that threat. Among those steps has been the issuance of national policies, such as the National Response Framework, issued in January 2008 by the Department of Homeland Security and approved by the President. The National Response Framework established a comprehensive approach for a unified national response to natural and man-made disasters, including WMD incidents. The National Response Framework directs the Attorney General to appoint a Senior Federal Law Enforcement Official to coordinate and direct federal law enforcement support activities related to a critical incident. Further, the National Response Framework includes annexes called Emergency Support Functions (ESF) that assign specific responsibilities to federal agencies in the event of a disaster. Under the National Response Framework, the Department of Justice (Department or DOJ) is assigned by ESF-13 the responsibility for coordinating federal law enforcement activities in response to a critical incident, such as a WMD attack, and for ensuring public safety and security in the event an incident overwhelms state and local law enforcement.

This review evaluated the readiness of the Department and its components to respond to a potential WMD incident. In addition, we examined the readiness of Department components' field offices in the National Capital Region (NCR) to respond in a coordinated way to a WMD incident.[2]

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[1] Annex 5 to National Security Presidential Directive-17/Homeland Security Presidential Directive-4, *Combating Weapons of Mass Destruction*, February 26, 2008.

[2] The National Capital Region is composed of the District of Columbia and nearby jurisdictions in Virginia and Maryland.

## RESULTS IN BRIEF

Our review found that the Federal Bureau of Investigation (FBI) has taken appropriate steps to prepare to respond to a potential WMD attack. The FBI has implemented a headquarters-led program that has established WMD response plans, provides WMD training to its staff and regularly conducts and participates in WMD exercises.

However, we concluded that the Department of Justice as a whole and components within the Department have not implemented adequate WMD response plans. As a result, the Department is not fully prepared to provide a coordinated response to a WMD incident. For example, the Department does not assign one entity or individual with the responsibility for the central oversight or management of WMD incident response. The Department has not updated its policies to reflect recent national policies, and the Department's operational response policies and plans have not been fully implemented. Moreover, no components other than the FBI have specific WMD operational response plans or provide training on responding to a WMD incident.

We also determined that the Department is not prepared to fulfill its role, assigned to it under the National Response Framework's ESF-13, to ensure public safety and security in the event a WMD incident overwhelms state and local law enforcement. The Department designated the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) as the lead agency to implement this requirement, but we found that the Department and ATF have not fulfilled the Department's role for coordinating the federal law enforcement response activities to an ESF-13 activation.[3] For example, the Department and ATF have not made personnel assignments to manage these activities, and ATF has not developed a catalog of law enforcement resources – people and equipment – available to be deployed in the event of a WMD incident.

In the National Capital Region (NCR), we found that law enforcement agencies coordinate regularly because of the preparations and cooperation required for the frequent special events held there. However, improvements

[3] ESF-13 activities include: (1) providing basic law enforcement assistance such as conducting routine patrols and making arrests; (2) issuing identification badges to emergency responders and other personnel needing access to a controlled area and verifying emergency responder credentials; (3) providing security forces to control access to the incident site and critical facilities; (4) providing officers for traffic and crowd control; and (5) providing for protection of emergency responders and other workers operating in a high threat environment.

are needed to ensure Department components' field offices are prepared to quickly and safely respond to a WMD incident. For example, the FBI's Washington Field Office is the only Department component field office in the NCR with a written plan and checklist to respond specifically to a WMD incident in the NCR. Moreover, most component field offices in the NCR have conducted little or no planning specifically for responding to a WMD incident and have no defined role in the FBI's WMD response plans. We also determined that some component officials in the NCR field offices are not aware of ESF-13 or that the Department designated ATF as the lead agency in carrying out the Department's responsibility to ensure public safety and security if ESF-13 is activated in the aftermath of a WMD incident.

In the sections below, we discuss in more detail the status of the Department's and its components' preparations for responding to a WMD incident, as well as the preparations of Department component field offices in the NCR.

**The FBI has taken appropriate steps to prepare to respond to a WMD incident.**

We concluded that the FBI has taken appropriate steps to prepare to respond to a WMD attack. Part of the FBI's primary mission is to prevent WMD incidents and investigate WMD threats. The FBI also has a WMD response program managed by the FBI's Weapons of Mass Destruction Directorate (WMD Directorate). The WMD Directorate's mission includes managing WMD investigations, assessing and responding to incidents involving the use or threatened use of WMD, and conducting exercises to test the FBI's ability to respond to a WMD incident.

The FBI has developed various plans, handbooks, and other resources to guide its staff in responding to a WMD incident. Further, the FBI regularly provides its staff with training specific to WMD incidents. The FBI provides WMD training for all new Special Agents during their initial FBI Academy training, and FBI WMD Coordinators and Intelligence Analysts are trained in specific WMD areas of emphasis. The FBI also provides training to a designated cadre of its Special Agents in Charge to serve as Senior Federal Law Enforcement Officials.[4]

[4] The National Response Framework authorizes the Attorney General to appoint a Senior Federal Law Enforcement Official, in appropriate circumstances such as a WMD incident, to provide operational coordination and direct the federal law enforcement support operations related to the incident.

The FBI also regularly conducts and participates in WMD response exercises. The FBI's data showed that from fiscal year (FY) 2005 to FY 2009, its field offices participated in at least 936 WMD exercises.[5] However, we found that the preparation of after action reports to document deficiencies identified during WMD response exercises is inconsistent, which hinders the FBI's ability to identify and address those deficiencies.

**The Department is not fully prepared to provide a coordinated response to a WMD incident.**

In contrast to the FBI, we found that the Department as a whole does not have policies or plans for responding to a WMD incident. Further, other than the FBI, Department components' preparations for responding to a WMD incident were not well coordinated. Department personnel (other than FBI staff) receive little training in the unique requirements associated with responding to a WMD incident. We also found that the Department does not have central oversight or management of WMD incident response policy development and planning for responding to a WMD incident. The management of the Department's response program is uncoordinated and fragmented, with some response functions being handled by a Special Assistant to the Deputy Attorney General and others by senior staff at the National Security Division (NSD), the Executive Office for United States Attorneys (EOUSA), and the FBI.

The Department has previously identified the need for coordinated emergency management at the Department level. In January 2006, the Assistant Attorney General for Administration circulated a proposed DOJ Order that assigns responsibilities for emergency response to a Crisis Management Committee. However, the proposed Order has not been made final.[6]

During our review, the Department began to take additional action in this area. In August 2009, the Deputy Attorney General directed the NSD, Office of Legal Policy, EOUSA, and the Justice Management Division to each designate a senior-level position to coordinate interagency response and emergency management activities. However, we believe this latest approach risks perpetuating a fragmented program because these individuals report to their component senior management. We believe the Department needs

[5] The data provided by the FBI included 45 of its 56 field offices.

[6] As of May 2010, the Department components had commented on the proposed Order and the Order was awaiting review by the Justice Management Division's Office of General Counsel.

to assign a senior official to be responsible for coordinating across all Department components the preparations and training to respond to a WMD incident.

We also found that the existing Department-level response policies and plans are not in compliance with national policy and are outdated. The Department's policies and plans do not incorporate principles and requirements of the National Response Framework or the National Incident Management System, which establishes a standardized approach for planning for and responding to all domestic incidents, including WMD incidents. The Department's Critical Incident Response Plan, which has not been updated since it was approved by the Attorney General in May 1996, does not address WMD incidents.

Additionally, the Department's policies and plans have not been fully implemented. For example, while current Department policies establish a Crisis Management Committee to determine the Department's on-scene response to an incident and an Attorney Critical Incident Response Group to coordinate legal support during an incident, neither of these entities exists.

Finally, we found that no Department law enforcement component, other than the FBI, has specific WMD operational response plans. ATF, the Drug Enforcement Administration (DEA), and the United States Marshals Service (USMS) each have groups that manage all-hazards responses, but these groups do not include specific preparations for WMD incidents. Further, although senior officials from all components told us they would support an FBI response, ATF, the DEA, and the USMS do not maintain operational response plans to respond to WMD incidents.[7] Also, except for the FBI, the components have provided little to no training for responding to a WMD incident and have rarely participated in WMD exercises. The other components do not regularly participate in National Level Exercises involving a WMD incident response or in WMD exercises at the regional, state, and local levels.

**The Department is not prepared to fulfill its role, assigned to it under the National Response Framework's ESF-13, to ensure public safety and security in the event of a WMD incident.**

The National Response Framework established the Department as the lead agency under ESF-13 to coordinate the use of federal law enforcement

[7] EOUSA (and the United States Attorneys' Offices) and the NSD have developed plans or guides for a legal response to a WMD incident.

resources to maintain public safety and security if local and state resources are overwhelmed during an incident. However, our review indicates that in the event of a WMD incident, the Department is not prepared to coordinate federal law enforcement activities to ensure public safety and security in accordance with ESF-13.[8]

In January 2008, the Department's lead component for ESF-13, ATF, proposed a Concept of Operations Plan to provide a structure for the Department to implement its ESF-13 responsibilities. As of March 2010, that Concept of Operations Plan was still in draft, and several actions essential to the Department's ability to fulfill its responsibilities for coordinating the federal law enforcement activities in an ESF-13 activation remained incomplete. The incomplete elements include staffing national and regional coordinator positions; training staff in ESF-13 operations; cataloging law enforcement resources available in the event of an ESF-13 activation; participating in National Level Exercises to test preparedness; and deputation of law enforcement personnel.

We found the Department and ATF have not made all the necessary personnel assignments to manage ESF-13 activities. At ATF headquarters, the ESF-13 National Coordinator has been assigned, but a Deputy National ESF-13 Coordinator has not been designated, and as of April 2010, ATF has not filled 6 of the 13 other positions it has dedicated to ESF-13.

In addition, ATF has provided minimal training in implementation of ESF-13 responsibilities to ATF field office personnel, support agency personnel, and state and local emergency operations officials. According to ESF-13 staff, ATF has trained only its personnel in field offices that are in states prone to hurricane activity for an ESF-13 activation resulting from a hurricane.

ATF has also not developed a catalog of law enforcement resources available to be deployed from all ESF-13 agencies or Department components in an ESF-13 activation because other agencies have not responded fully to ATF's requests for information. Further, ATF has not tested its preparedness to carry out its ESF-13 responsibilities in National Level Exercises or any other functional exercise involving a WMD incident. Finally, ATF is still in the process of determining how ESF-13 law enforcement personnel will be deputized as Deputy U.S. Marshals if ESF-13 is activated.

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[8] The National Response Framework outlines 10 specific responsibilities for the Department to coordinate. See Appendix III for the Department's ESF-13 responsibilities.

**In the National Capital Region, with the exception of preparing for special events, WMD incident response planning depends primarily on FBI resources and capabilities.**

In the NCR, Department components regularly work with each other, with other federal agencies, and with state and local law enforcement to prepare to respond to critical incidents that may occur during the frequent special events that occur in the NCR, such as presidential inaugurations and visits by heads of state. As a result of the frequent cooperation and coordination for special events, NCR field office staff told us they are aware of other agencies' roles and the resources that are available from them if a WMD incident should occur during a special event.

However, outside of special events, among Department components in the NCR only the FBI has conducted WMD-specific planning or training. The FBI's Washington Field Office is the only Department component in the NCR with plans specifically for responding to a WMD incident, and it is the only NCR field office that provides WMD training to its response personnel and regularly participates in WMD exercises. The FBI's plan identifies how the FBI will work with federal agencies outside the Department, state and local law enforcement, and emergency response agencies, but it does not include any stated role for the NCR field offices of the Department's other components.

When we asked if they were familiar with the FBI's WMD response plan, officials from ATF, the DEA, and the USMS said they were not familiar with the plan and had not asked to see it. Additionally, FBI exercise data, from FY 2005 through FY 2009, shows that the FBI Washington Field Office participated in 29 WMD exercises with state and local law enforcement, as well as other federal agencies. However, the other Department of Justice components did not participate in these or other WMD response exercises.

We also found that some component officials in NCR field offices were not aware of ESF-13 or ATF's role as the Department's lead coordinator if ESF-13 is activated. We asked 12 NCR field office managers about ESF-13 requirements and assignments, but only 6 knew about ESF-13 and only 3 were aware of ATF's designation as the Department's lead coordinator. This lack of familiarity could delay a coordinated federal law enforcement response in the event a WMD incident or other disaster results in the activation of ESF-13.

## Conclusion

Our review concluded that only the FBI has taken adequate steps to prepare to respond to a potential WMD attack. The FBI has headquarters and field office operations plans, handbooks, and other resources for responding to WMD incidents. The FBI regularly provides WMD-specific training to its personnel who are likely to respond to a WMD incident. The FBI regularly conducts or participates in WMD response exercises, having taken part in over 900 exercises from FY 2005 through FY 2009. The FBI field offices track their participation in exercises, although after action reports based on the exercises are not consistently prepared.

However, neither the Department nor the components within the Department have implemented adequate WMD response plans. The Department has not designated an entity or individual to provide central oversight of WMD-related activities, and responsibility for management of the Department's response program is uncoordinated and fragmented. The Department has not updated its policies to reflect recent national policies, existing policies have not been fully implemented, and we found no Department policies or plans for responding to a WMD incident.

Aside from the FBI, the Department's other law enforcement components' preparations for responding to a WMD incident are also lacking. Officials in ATF, the DEA, and the USMS indicated that they would support the FBI's response to a WMD incident. However, none of these components has specific WMD operational response plans, provides training for responding to a WMD incident, or regularly participates in WMD response exercises.

In addition, the Department has not adequately prepared to coordinate federal law enforcement activities if it is called upon to ensure public safety and security in accordance with ESF-13 in the event of a WMD incident. ATF has not assigned adequate staff to ensure all ESF-13 planning and coordination activities required by the National Response Framework are carried out. ATF has not provided adequate training in ESF-13 responsibilities to its own staff or personnel from other ESF-13 agencies. Additionally, ATF lacks comprehensive information on law enforcement resources that could be deployed during a WMD incident.

In the National Capital Region, coordination is aided by regular preparations and cooperation required for frequent special events in the region. However, other than the FBI, component field offices in the NCR have no WMD-specific response plans or training and have not participated in WMD-specific exercises. Moreover, we found a lack of awareness

regarding the Department's ESF-13 responsibilities and ATF's authority to serve as the lead coordinator for those activities, which could delay coordinating federal law enforcement support to state and local law enforcement in the event of a WMD incident in the NCR.

In this report, we make five recommendations to help the Department better prepare to respond to a WMD incident and to fulfill its responsibilities under ESF-13. We recommend that the Department:

1. Designate a person or office at the Department level with the authority to manage the Department's WMD operational response program.

2. Update the Department's response policies and plan to conform them to the National Response Framework and the National Incident Management System.

3. Require Department components to update their own policies and plans to reflect the updated Department guidance, and to reflect the need for adequate coordination among Department components in responding to WMD incident.

4. Establish effective oversight to ensure that components maintain WMD response plans, participate in training and exercises, and implement a corrective action program in response to such exercises.

5. Ensure that the Department is prepared to fulfill its emergency support function responsibilities under the National Response Framework, including reviewing the designation of ATF as the Department's lead agency to coordinate public safety and security activities, approving a Concept of Operations Plan, and staffing national and regional coordinator positions.

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# INTRODUCTION

In December 2008, the Commission on the Prevention of Weapons of Mass Destruction (WMD) Proliferation and Terrorism issued a report on the United States' ability to protect itself from a WMD attack. The Commission concluded that, without concerted action to prevent it, a WMD attack is likely to occur somewhere in the world by 2013.[9]

The general definition of a WMD is "any weapon or device that is intended or has the capability to cause death or serious bodily injury to a significant number of people through the release, dissemination, or impact of toxic or poisonous chemicals or their precursors; a disease organism; or radiation or radioactivity."[10] Chemical, biological, radiological, and nuclear materials can be used to produce thousands of casualties in a single attack. In addition to mass casualties, a WMD could also disrupt vital infrastructure and disable communications, financial, and transportation systems. The text boxes to the right and on the next page present hypothetical examples of biological, chemical, radiological, and nuclear WMD incidents.

Planning for a response to a WMD incident is important because the actions taken to ensure public safety and security in response to a WMD incident differ from

**Biological Attack Scenario**

Two individuals release 100 liters of aerosolized anthrax into the air of a major metropolitan city. More than 330,000 people are exposed to the anthrax spores. Casualties and injuries resulting from the inhaled anthrax and subsequent infection reach upwards of 13,000 people. The economic costs associated with the closure and decontamination of affected areas may run in the billions of dollars, and the city will likely face a recovery effort that will take months.

**Chemical Attack Scenario**

Members of a terrorist organization acquire the nerve agent sarin and release it into the ventilation system of a large office building in a metropolitan area. The agent quickly kills 95 percent of the building's 6,000 occupants. Even more injuries and deaths occur as first responders arrive on the scene unaware of the current conditions. As the nerve agent escapes the building, almost 50,000 people located in adjacent buildings are forced to shelter in place. Recovery time will likely be 3 to 4 months, with the economic impact reaching upwards of $300 million.

Source: *DHS's Progress in Federal Incident Management Planning*, DHS OIG-10-58, February 2010.

[9] Commission on the Prevention of WMD Proliferation and Terrorism, *World at Risk: The Report of the Commission on the Prevention of WMD Proliferation and Terrorism*, December 2, 2008.

[10] Annex 5 to National Security Presidential Directive-17/Homeland Security Presidential Directive-4, *Combating Weapons of Mass Destruction*, February 26, 2008.

responding to an incident involving only conventional explosives. When conventional explosives are involved, injuries and damage are caused by physical force, either from the force of the blast itself or by shrapnel. Immediately after the explosion, the response is focused on, for example, caring for the injured, stabilizing damaged buildings, cleaning up debris, and conducting an investigation to identify the perpetrator.

In contrast to conventional explosives, WMD incidents involve agents that are more persistent. For example, a so-called "dirty bomb" can release radioactive material that contaminates the immediate area of the blast and can taint a larger region over time. Moreover, the radiological material is invisible and remains in the ground unless it is removed, presenting a danger to individuals entering the area for many years. Toxic chemicals such as nerve agents not only contaminate the area where they are released, but may float downwind to settle and cause casualties elsewhere. Biological agents may remain a viable threat for long periods of time, and biological WMD incidents may not even be recognized until victims' symptoms appear and mass casualties are evident.

When a WMD incident occurs, first responders must follow local protocols for notifying emergency services and emergency support personnel. Only personnel trained in responding to a WMD incident should be deployed to a potentially contaminated area. Responders must initiate a risk assessment and recognize the characteristics of chemical and biological agents, radiological materials, and dissemination devices. In addition, first responders use specialized detection devices and equipment, such as kits for detecting chemical agents and meters to measure radiation.

**Radiological Attack Scenario**

Members of a terrorist organization have manufactured and detonated a radiological dispersal device or a "dirty bomb" in three regionally close, moderate to large cities. Each explosion causes significant damage to many of the buildings and structures in the immediate area of the blast. At each site, there are approximately 180 deaths and upwards of 20,000 detectable contaminations. Recovery efforts could take several months to years. Total economic loss could be in the billions of dollars.

**Nuclear Attack Scenario**

Members of a terrorist organization have detonated a 10-kiloton improvised nuclear device in a heavily populated metropolitan area. The initial detonation causes total infrastructure damage in a 3-mile radius and various levels of radiation spanning out 3,000 square miles. As casualties climb in excess of several hundred thousand, hundreds of thousands of survivors either shelter in place or are forced onto the city's transportation system to seek shelter in safe areas or evacuate the city. The city is now facing hundreds of billions of dollars in damage and a recovery effort that will take years.

Adapted from: *DHS's Progress in Federal Incident Management Planning*, DHS OIG-10-58, February 2010.

In a WMD incident, protection of the lives of the victims as well as the responders is a primary concern. Response teams must have the appropriate equipment to allow them to safely enter a WMD site and avoid the hazard of the WMD agents. For unknown or highly toxic areas, responders must use a fully encapsulated, vapor protection suit that provides the greatest level of skin and respiratory protection available. As the hazard is remediated less protective measures may be allowed.

In addition, according to the Target Capabilities List in the National Response Framework, first responders should isolate the hazards by establishing control zones.[11] There are three types of control zones:

- Hot Zone – The area immediately surrounding a hazardous materials incident, which extends far enough to prevent the hazardous materials released from causing harm to personnel outside the zone. This zone is also referred to as the exclusion or restricted zone. Personnel entering this area must wear the highest level of protective equipment based on the substance involved.
- Warm Zone – The area where personnel, equipment decontamination, and hot zone support takes place. It is referred to as the decontamination, contamination reduction, or limited access corridor. It includes control points for access to the corridor, which assists in reducing the spread of contamination. Personnel working in this area must also wear appropriate protective gear, as they will be dealing with contaminated people and equipment.
- Cold Zone – Contains the command post and other support functions deemed necessary to control the incident. Personnel working in this area do not have to wear protective gear, but should have it available if needed.

According to the Target Capabilities List, after these areas are established, responders must continue to assess the ongoing threat for WMD and begin rescue operations. Responders must develop a decontamination plan for people, pets, and livestock, as well as the area itself. Decontamination procedures vary depending on the specific hazard because one procedure or method will not work for all hazards. The contaminated area must remain secure until decontamination is complete.

[11] The Target Capabilities List defines 37 specific capabilities that all levels of government should possess in order to respond effectively to disasters, including a WMD incident.

## BACKGROUND

The federal government has taken various steps to prepare to meet the threat of weapons of mass destruction. One of those steps was the completion of the National Response Framework, which establishes a comprehensive approach for a unified national response to natural and man-made disasters, including WMD incidents. National policies and presidential directives are intended to promote an organized and coordinated response to a WMD attack.

In this section, we discuss the Department of Justice's (Department or DOJ) policies, guidance, and plans relating to emergency or critical incident response that pertain to all such incidents. As discussed below, the Department does not currently have any policies, guidance, or plans that are specific to the WMD threat.

We also describe the presidential directives and national policies that control emergency response planning, including requirements for coordination among federal departments.

### Department Policy and Guidance Governing Emergency Response Planning

The Department's policies and assignment of responsibilities for responding to critical incidents are primarily contained in one Department order, four memoranda from the Attorney General or Deputy Attorney General, and a memorandum of understanding between the Executive Office for United States Attorneys (EOUSA) and the National Security Division (NSD). The following provides a brief description of these materials. The duties these documents assign to each component are described in the next section.

DOJ Order 1900.6A, *Department of Justice Crisis Management Plan*, December 13, 1988. This Order contained Department policy for crisis management, including terrorist incidents, and assigns responsibilities for a Crisis Management Plan's management and implementation. It created a Crisis Management Committee to guide the Department's readiness planning and to determine the operational responsibility for the on-scene federal or Department response to a

critical incident.[12] It also directed the Justice Management Division's (JMD) Security and Emergency Planning Staff (SEPS), under the direction of the Crisis Management Committee, to "conduct periodic exercises of emergency operating plans to ensure that the DOJ maintains a high level of readiness."

Memorandum from the Attorney General, *Attorney Critical Incident Response Group*, January 11, 1996. This memorandum established an Attorney Critical Incident Response Group to improve the Department's legal response to critical incidents and established requirements for Department attorneys and U.S. Attorney staff in headquarters and districts in responding to a critical incident.

Memorandum from the Attorney General, *Critical Incident Response Plan*, May 23, 1996. This memorandum provided that the Federal Bureau of Investigation's (FBI) Strategic Information Operations Center, the FBI's Critical Incident Response Group, and Department headquarters may become involved in critical incident responses, depending on the magnitude of the event and the response required.[13] In addition, the memorandum clarified that the prosecutorial and legal response to a critical incident would be handled by the U.S. Attorney's Office (USAO) in the district where an incident occurred and that the Drug Enforcement Administration (DEA) and the U.S. Marshals Service (USMS) would consult and coordinate with the FBI during a crisis.

Memorandum from the Deputy Attorney General, *Emergency Support Function-13 (ESF-13), Public Safety and Security*, October 16, 2008. In this memorandum, the Deputy Attorney General stated that in line with a recommendation by the Homeland Security Council following Hurricane Katrina, the Department was assigned the lead role in coordinating federal law enforcement support to state and local and federal government agencies during critical incidents. This responsibility, designated as Emergency Support Function-13 (ESF-13) in the National Response Framework, requires the Department to ensure public safety and security in the event of a natural or man-made

[12] At a minimum, the Crisis Management Committee includes the Attorney General or his or her designee; the Deputy Attorney General; the Associate Attorney General; the Assistant Attorney General, Office of Legal Counsel; the Director, Office of Public Affairs; and the Director of the FBI.

[13] The Strategic Information Operations Center is the FBI's national command center and operates on a 24-hour basis. The Critical Incident Response Group facilitates the FBI's rapid response to critical incidents.

disaster.[14] (The requirements of ESF-13 are described below in the section on national policy.) The Attorney General accepted the assignment for the Department in 2006 and assigned the lead role to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The 2008 memorandum formalized ATF's assignment as the Department's coordinator for ESF-13 activities to "coordinate the Federal law enforcement response to assist other Federal, State, local, tribal, and territorial law enforcement department and agencies that have been overwhelmed or incapacitated by an act of terrorism or natural or man-made disaster."

Memorandum from the Deputy Attorney General, *Interagency Coordination Positions for Response and Emergency Management*, August 31, 2009. In this memorandum, the Deputy Attorney General directed EOUSA, JMD, NSD, and the Office of Legal Policy each to identify a senior-level individual to assume responsibilities for coordinating the component's participation in interagency policy development and planning for man-made and natural disasters, as well as for national and regional exercises. According to a senior Department official from the Office of the Deputy Attorney General, four individuals in these components had assumed these responsibilities as of January 12, 2010.

Memorandum of Understanding Between the Executive Office for United States Attorneys and National Security Division, April 16, 2008. This memorandum of understanding transferred the overall administrative, logistical, and program management functions of the Crisis Management Coordinator program from the NSD to EOUSA and further delineated the respective duties and responsibilities of EOUSA and the NSD in crisis responses.[15] The NSD retained responsibility for anti-terrorism responses, including providing guidance and training to the USAOs on legal issues that are likely to arise in a terrorist incident, participating in interagency meetings with the Department of Homeland Security (DHS) and other agencies to plan the Department's role in

[14] "Public safety and security" is defined as the ability to protect critical infrastructure, control access to and from an incident site, manage traffic and crowd control, and provide general law enforcement support during an incident.

[15] The Crisis Management Coordinator program was designed to improve the planning and preparation of the USAOs to respond quickly to critical incidents. Each Crisis Management Coordinator is responsible for ensuring the USAOs' coordination with law enforcement and emergency response agencies, ensuring the identification and organization of resources for providing legal advice during a critical incident, and improving the USAOs' anticipation of crisis situations.

response to a terrorist event, and participating in exercises that involve responding to an act of terrorism. EOUSA assumed oversight responsibility for the administrative, logistical, and program management aspects of the Crisis Management Coordinator program, including preparation, planning, and response coordination for natural disasters and other non-terrorism crisis events.

**Department Components Involved in Emergency Response**

Various Department components and offices have emergency response roles under the DOJ Orders and Attorney General memoranda described above. Table 1 lists these offices and components, the main responsibilities they have been assigned, and the order or memorandum in which the responsibility was assigned.

**Table 1: Assigned Responsibilities in an Emergency Situation**

| Office | Responsibilities |
|---|---|
| **Department Offices** | |
| ODAG | Member of the Attorney General's Crisis Management Committee. DOJ Order 1900.6A. |
| JMD | Under the direction of the Crisis Management Committee, SEPS is to conduct periodic exercises of emergency operating plans to ensure the Department maintains a high level of readiness. DOJ Order 1900.6A. |
| | JMD's Justice Command Center, in coordination with Department components, maintains crisis management plans. DOJ Order 1900.6A. |
| | Maintains a coordinator for component participation in interagency policy development for man-made and natural disasters, and national and regional exercises. August 2009 Deputy Attorney General Memorandum. |
| EOUSA | Maintains a coordinator for component participation in interagency policy development for man-made and natural disasters, and national and regional exercises. August 2009 Deputy Attorney General Memorandum. |
| NSD | Provides guidance and training to the USAOs on legal issues that likely to arise in a terrorist event. Provides legal advice on criminal matters during an emergency. April 2008 Memorandum of Understanding between EOUSA and the NSD. |
| | Participates in interagency meetings with the DHS and other agencies to plan the Department's role in response to a terrorist event and participates in exercises that involve responding to an act of terrorism. April 2008 Memorandum of Understanding between EOUSA and the NSD. |
| | Maintains a coordinator for component participation in interagency policy development for man-made and natural disasters, and national and regional exercises. August 2009 Deputy Attorney General Memorandum. |
| Office of Legal Counsel | Member of the Attorney General's Crisis Management Committee. DOJ Order 1900.6A. |
| Office of Legal Policy | Maintains a coordinator for component participation in interagency policy development for man-made and natural disasters, and national and regional exercises. August 2009 Deputy Attorney General Memorandum. |

*Continued on next page*

| Components | |
|---|---|
| ATF | Coordinates ESF-13 activities if ESF-13 is activated during a WMD incident. October 2008 Deputy Attorney General Memorandum. |
| DEA | Consults and coordinates with the FBI during a crisis. May 1996 Attorney General Memorandum. |
| FBI | The FBI field office where the incident occurs responds to domestic security and terrorism threats and notifies FBI headquarters and the NSD when a crisis begins.* The FBI Director notifies the Deputy Attorney General or the Attorney General. If the response requires more resources than a field office can provide, FBI headquarters will activate a regional response or greater. May 1996 Attorney General Memorandum. |
| | Member of the Attorney General's Crisis Management Committee. DOJ Order 1900.6A. |
| USAOs | Provides legal guidance and oversight in all situations involving a federal law enforcement response. May 1996 Attorney General Memorandum. |
| USMS | Consults and coordinates with the FBI during a crisis. May 1996 Attorney General Memorandum. |

* The Criminal Division's Counterterrorism Section (CTS) had an emergency response role prior to September 2006. However, on September 28, 2006, the Department announced that CTS would become part of the NSD established under the *USA Patriot Improvement and Reauthorization Act of 2005* (Pub. L. No. 109-177 (2006)).

## National Policies Related to Emergency Response Planning

Homeland Security Presidential Directive-5, *Management of Domestic Incidents*, February 2003. Issued by the President, Homeland Security Presidential Directive (HSPD)-5 provides that the DHS has the lead role in managing the response to incidents in the United States, including terrorist attacks, major disasters, and other emergencies. The Directive specifies, however, that the Attorney General, in coordination with the DHS and working through the FBI, will coordinate law enforcement's activities for preventing and disrupting terrorist attacks. The Directive required that, by the beginning of fiscal year (FY) 2005, federal departments and agencies formally implement a standardized methodology for responding to all domestic incidents, from natural disasters to acts of terrorism.[16] It also mandates that federal agencies revise their emergency operations plans to adhere to a national policy for emergency response and preparedness.

Homeland Security Presidential Directive-8, *National Preparedness*, December 2003. HSPD-8 requires all federal agencies, under the leadership of the DHS, to support in the preparation for and response to

[16] This methodology was formally included in the National Incident Management System, discussed below.

a domestic emergency. The Directive also requires a national-level exercise program to annually test federal agencies' emergency response preparedness. The exercises include critical incident scenarios, such as responding to natural disasters and preventing and responding to WMD and terrorist incidents.

In December 2007, the President approved *Annex 1 to Homeland Security Presidential Directive-8*, which formally established a standard comprehensive approach to national planning for critical incident response. The annex requires agencies to develop all-hazards plans, as well as plans to respond to eight scenarios representing the gravest dangers faced by the United States (described in the National Response Framework below), and to participate in interagency planning and coordination for domestic incidents.

Executive Order 13527, *Establishing Federal Capability for the Timely Provision of Medical Countermeasures Following a Biological Attack*, December 30, 2009. To further address the biological scenario in *Annex 1 to Homeland Security Presidential Directive-8*, the President approved this Order requiring that the Secretaries of Homeland Security, Health and Human Services, and Defense, and the Attorney General, in coordination with the U.S. Postal Service, within 180 days of the date of the Order, to develop a plan for supplementing local law enforcement personnel, as necessary, with federal law enforcement to provide security for assisting postal workers delivering medical countermeasures in the event of a biological attack, with anthrax as the primary consideration.[17]

*National Incident Management System*, March 2004. The National Incident Management System is a standardized methodology for responding to critical incidents, including a WMD incident, which is designed to be used at all levels of government. The President directed the DHS, in HSPD-5, to issue a document establishing the methodology and directed all level of government to adopt it. The National Incident Management System methodology includes: (1) command and management, including templates for the standard incident command structures; (2) preparedness, including templates for planning, training, and exercises; (3) resource management; and (4) communications and

[17] The Office of the Deputy Attorney General, ATF, EOUSA, and the NSD are participating in the development of a federal law enforcement plan for assisting the U.S. Postal Service in providing security for the distribution of medical countermeasures in the event of a biological attack.

information management.[18] Agencies are required to train their operational response personnel on the National Incident Management System methodology.

*National Response Framework*, January 2008. Issued by the DHS and approved by the President, the National Response Framework implements the requirements in HSPD-5 and HSPD-8 for a consistent approach to emergency response and preparedness for domestic incidents.[19] It describes how communities, tribes, states, the federal government, the private sector, and nongovernmental partners should work together to respond to incidents; describes specific authorities and best practices for managing incidents; and reinforces a consistent methodology for managing incidents. It also states that agencies are to conduct exercises and evaluate their performance to identify and correct weaknesses.

The National Response Framework directs federal agencies to develop all-hazards response plans and plans to respond to eight scenarios. Of the eight scenarios, four are WMD-specific and include attacks with nuclear, radiological, biological, and chemical weapons.[20] In addition, the National Response Framework contains annexes that address specific hazardous incidents. The Department is identified as a cooperating agency in the following annexes: nuclear and radiological, biological, and catastrophic incidents.[21] The Department, through the FBI, is identified as the lead coordinator for the Terrorism Incident Law Enforcement and Investigation Annex, which assigns the Department the responsibility for investigating all threats or acts of terrorism.

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[18] www.fema.gov/emergency/nims/IncidentCommandSystem.shtm, accessed May 12, 2010.

[19] This policy was originally approved by the President and issued in December 2004 as the *National Response Plan.* The policy was revised in January 2008 and renamed the *National Response Framework*.

[20] The other four scenarios are explosives attack, natural disaster, cyber attack, and pandemic influenza.

[21] The lead coordinating agencies for the Nuclear/Radiological Incident Annex are the Department of Defense; Department of Energy; DHS; Environmental Protection Agency; National Aeronautics and Space Administration; and the Nuclear Regulatory Commission. The lead coordinating agency for the Biological Incident Annex is the Department of Health and Human Services. The lead coordinating agency for the Catastrophic Incident Annex is the DHS's Federal Emergency Management Agency.

The National Response Framework also authorizes the Attorney General to appoint a Senior Federal Law Enforcement Official, in appropriate circumstances such as a WMD incident, to provide operational coordination and direct the federal law enforcement support operations related to the incident. According to the National Response Framework, this official does not have to come from the Department, but will usually be an FBI Special Agent in Charge if the incident is an act of terrorism.

The National Response Framework also establishes 15 Emergency Support Functions that are common to all incidents and designates 9 federal departments to be the lead coordinators of various functions.[22] The Department is the lead coordinator for ESF-13, which involves the use of federal law enforcement resources to maintain public safety and security if local and state resources are overwhelmed during an act of terrorism or natural or man-made disaster.[23] ESF-13 can be activated by a presidential declaration of an emergency or disaster, or by the Attorney General at the request of a state governor.[24]

The National Response Framework assigns the Department 10 specific responsibilities related to ESF-13. The 10 responsibilities include staffing management positions at headquarters and in field offices to manage ESF-13 activities: cataloging federal resources, training staff, planning and participating in National Level Exercises, and

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[22] A summary of the 15 Emergency Support Functions is presented in Appendix II.

[23] ESF-13 activities are not the same as the activities described in the National Response Framework's Terrorism Incident Law Enforcement and Investigation Annex or other criminal investigative law enforcement activities. During terrorist incidents, including a WMD incident, ESF-13 coordinates and contributes support to the FBI's operational response, if requested.

[24] The *Justice Assistance Act of 1984,* 42 U.S.C. § 10501 (2006), et seq., and the *Robert T. Stafford Disaster Relief and Emergency Assistance Act,* Pub. L. No. 93-288, as amended, 42 U.S.C. §§ 5121-5206, and implementing regulations in 44 C.F.R. §§ 206.31-206.48. Under Emergency Federal Law Enforcement Assistance provisions in the *Justice Assistance Act,* the Attorney General may provide law enforcement assistance in response to a governor's written request when assistance is necessary to provide an adequate response to a law enforcement emergency. The *Stafford Act* provides the statutory framework for a presidential declaration of an emergency or a declaration of a major disaster. Such declarations allow a wide range of federal resources to be made available to assist in dealing with the emergency or major disaster. Federal resources under this Act supplement state and local resources for disaster relief and recovery.

providing coordination among the Department's law enforcement partners in the field (see Appendix III for the Department's ESF-13 responsibilities). On October 16, 2008, an Office of the Deputy Attorney General memorandum formally designated ATF as the Department's lead for planning and coordinating the federal law enforcement response if ESF-13 is activated. While ATF coordinates all ESF-13 activities, personnel to perform ESF-13 activities may be provided by any of 13 federal agencies.[25]

[25] There are 13 agencies involved in ESF-13 activities. The Department of Justice is lead coordinator, and the other 12 agencies are the Department of Agriculture; Department of Commerce; Department of Defense; Department of Energy; Department of Homeland Security; Department of the Interior; Department of the Treasury; Department of Veterans Affairs; Environmental Protection Agency; National Aeronautics and Space Administration; Social Security Administration; and U.S. Postal Service. We refer to these 12 support agencies in the text as the ESF-13 agencies.

## PURPOSE, SCOPE, AND METHODOLOGY OF THE OIG REVIEW

### Purpose

Our review examined the Department's and its components' preparedness for responding to a WMD incident. Specifically, we examined whether:

- the Department and components have adequate policies and operational plans for their WMD preparedness activities;
- the Department and components have a person or office to manage WMD operations, activities, or responsibilities;
- the Department and its components are training their personnel to respond to a WMD incident;
- the Department and its components are conducting WMD response exercises; and
- corrective actions are being taken to resolve deficiencies identified during WMD response exercises.

In addition, we examined the preparations of components' field offices in the National Capital Region for responding to a WMD incident.[26]

### Scope and Methodology

We examined the preparedness of the Department and its components to respond to a WMD incident. Emergency preparedness functions are generally considered to have two main elements: operational response and continuity planning. Operational response consists of an on-scene response to the incident and investigation of the incident. Continuity planning includes continuity of operations planning (COOP) and continuity of government (COG) planning.[27]

This report examines the preparations of the Department to carry out an operational response but does not examine preparedness to prevent a WMD incident, conduct a criminal or other investigation of a

[26] The National Capital Region is composed of the District of Columbia and nearby jurisdictions in Virginia and Maryland.

[27] COOP details how an agency will continue to perform its essential functions during circumstances that disrupt normal operations and COG refers to the continued functioning of constitutional government under all circumstances.

WMD incident, or COOP and COG planning. Also, we did not review ESF-13 support for responding to natural disasters, such as hurricanes and earthquakes.

In conducting this review, we examined the roles of the Office of the Deputy Attorney General, JMD, ATF, the Criminal Division, DEA, EOUSA, FBI, NSD, Office of Legal Counsel, Office of Legal Policy, USAOs in the National Capital Region, and the USMS.[28]

Our fieldwork, which was conducted from July 2009 through December 2009, included interviews, data collection and analyses, and document reviews. The review covered activities from FY 2005 through FY 2009. A detailed description of the methodology of our review is in Appendix I.

[28] Although we reviewed the Federal Bureau of Prisons because of its law enforcement capabilities, we determined during the review that the Department has not designated a role for the Federal Bureau of Prisons in providing an operational response to a critical incident and so did not include it in this report.

## RESULTS OF THE REVIEW

**Our review found that the FBI has taken appropriate steps to prepare to respond to a WMD incident because it has implemented a headquarters-led program that established WMD response plans, provided WMD training to its response staff, and performed WMD exercises. However, the Department and its other components have not implemented adequate WMD response plans. The Department's emergency response program is fragmented, and the components' WMD incident response planning is inconsistent and not well coordinated. There is no Department plan that specifically addresses response to a WMD incident as opposed to other crises or critical incidents. Further, the FBI has not formally identified roles and responsibilities for the other Department components in its plans. Moreover, the Department is not prepared to carry out its responsibilities under ESF-13 for coordinating the law enforcement activities of federal departments to ensure public safety and security if state and local law enforcement is overwhelmed by a WMD incident. In the National Capital Region, planning for incidents that may occur during special events is coordinated, but planning for incidents at other times needs improvement.**

### The FBI has taken appropriate steps to prepare to respond to a WMD incident.

As described in the following sections, we found that the FBI has implemented an appropriate WMD response program, including designating a group within the FBI to manage WMD operations activities and responsibilities, establishing operations plans for responding to a WMD incident, providing appropriate FBI staff with training to prepare for a WMD incident, participating in WMD response exercises, and considering corrective actions taken based on exercises.

<u>The FBI WMD Directorate manages the FBI's WMD response efforts</u>.

Management of FBI resources, and the FBI's actual operational response activities, at the scene of a WMD incident are coordinated

through the FBI's Weapons of Mass Destruction Directorate (WMD Directorate). The WMD Directorate's mission includes managing WMD investigations, preventing the use of WMDs, assessing and responding to incidents involving the use or threatened use of WMDs, and staging various exercises to test the FBI's ability to respond to a WMD incident. The WMD Directorate includes the WMD Operations Unit, which provides strategic management and oversight of the FBI WMD program. The WMD Directorate is supported by the following additional FBI units:

- The Critical Incident Response Group (CIRG) integrates tactical and investigative resources to provide rapid support to a field office response to a critical incident and to facilitate management of the incident.
    - CIRG's Strategic Information and Operations Center serves as the FBI's 24-hour clearinghouse for information and the center for crisis management, including the collection and dissemination of information to support responding to a critical incident.
    - CIRG's Operations Support Branch prepares for, responds to, and assists in the resolution of critical incidents.
- The Laboratory Division provides, among other things: (1) WMD operational and technical-level training to FBI field personnel; (2) research and development in WMD detection, identification, and response; (3) forensic, scientific, and technical response to WMD incidents; and (4) WMD technical information and advice to the FBI and other federal, state, and local agencies.

In addition, at the field office level the FBI primarily relies on a designated Special Agent in each field office, referred to as a WMD Coordinator, to implement the FBI's WMD-related activities, including responding to a WMD incident. The responsibilities of WMD Coordinators are to identify WMD threats and vulnerabilities, provide WMD subject matter expertise to field offices, and coordinate with headquarters during the FBI's response to a WMD incident.[29]

[29] The OIG recently conducted an audit of the FBI's WMD Coordinator Program. The audit report found many WMD Coordinators could not identify the top, specific WMD threats and vulnerabilities that faced their particular field division. *See* U.S. Department of Justice Office of the Inspector General, *The Federal Bureau of Investigation's Weapons of Mass Destruction Coordinator Program*, Audit Report 09-36 (September 2009).

The FBI maintains operational plans, handbooks, and other resources to direct and assist FBI personnel in responding to WMD incidents.

The FBI maintains a variety of operational plans to respond to a WMD incident at the headquarters, regional, and local levels. For example, the FBI has a Terrorism Incident Response Protocol that establishes step-by-step procedures for headquarters units that assess and respond to acts of terrorism, including WMD incidents. The FBI also has Crisis Response Plans that provide detailed, tactical, and administrative assignments for the FBI's response to critical incidents at the local and regional level.[30] In addition, the FBI has Incident Contingency Plans that are further detailed, based on a standard template, and that can be modified to address potential WMD threats in each field office.

The FBI also maintains handbooks and other resources to aid FBI Special Agents in responding to various types of WMD incidents. For example, the *Radiological/Nuclear Law Enforcement and Public Health Investigative Handbook* provides responders with indicators to determine if radiological or nuclear materials are present. The FBI also has created a *Critical Incident Handbook,* which is designed to assist FBI Special Agents in Charge in quickly organizing and executing an effective response to a critical incident, including a WMD incident. The handbook contains information to guide Special Agents in Charge through all phases of a critical incident and provides a checklist for responders to follow. Other FBI resources provided to FBI response personnel include pocket guides, flipbooks, and cards. These resources present chemical, biological, and radiological indicators, WMD response procedures, WMD statutes, and guidelines to respond to WMD threats and incidents.

The FBI regularly provides training specifically on responding to a WMD incident to its response staff.

The FBI provides a variety of regular training specific to WMD incidents, including:

- All new Special Agents receive basic WMD training during their initial FBI Academy training;

[30] FBI officials said every FBI field office should have a Crisis Response Plan, which is supposed to include a WMD annex describing the FBI's operational response to a WMD incident.

- WMD Coordinators and Intelligence Analysts receive training in specific WMD areas of emphasis, including: (1) biological, (2) chemical, including chemical explosives, (3) radiological, (4) nuclear, (5) agroterrorism, (6) explosives, and (7) hazardous materials; and

- FBI personnel, as well as local, state, and federal first responders participate in the Comprehensive Integrated Training and Exercise course, which is designed to enhance first response capability to a WMD incident. The objective of the course is to strengthen the ability of the FBI and its partner agencies to detect and prevent WMD threats and respond to WMD incidents. The course concludes with a WMD scenario tabletop exercise.

In addition, various divisions within the FBI that could have a role in responding to a WMD incident are trained within their areas of expertise. For example:

- A WMD Master's Degree and Certificate Program, which is offered to Special Agents and Intelligence Analysts but is mainly directed at WMD Coordinators, includes courses with a specific emphasis on the material most relevant to the FBI's role in WMD incidents, and

- A program for Special Agents to develop as WMD career professionals with expertise in a specific type of WMD that offers WMD training through partner agencies and the National Laboratories.

Further, a Supervisory Special Agent with the FBI's Operational Technology Division told us that the Division trains staff all over the country to operate specialized equipment to ensure communications within the FBI during any critical incident.[31] Also, the Laboratory Division's Assistant Director said the Laboratory Division trains evidence response personnel located in each FBI field office, as well as specialized response teams that would be involved in responding to a WMD incident, to safely enter an incident area to collect evidence and support a

[31] Although not part of the WMD Directorate, the FBI's Operational Technology Division supports the FBI's investigative and intelligence-gathering efforts with a wide range of technological equipment and communications tools, such as mobile command centers and satellite communications.

response.[32] In addition, the Laboratory Division provides hazardous materials operations, incident command and WMD crime scene operations training to FBI Special Agents in Charge or other FBI personnel who may lead an incident command.

The FBI also trains a designated cadre of FBI Special Agents in Charge to serve as Senior Federal Law Enforcement Officials who provide operational coordination and direct the federal law enforcement support operations related to an incident. All FBI personnel identified as potential Senior Federal Law Enforcement Officials are also trained on the National Response Framework, National Incident Management System, and Incident Command System through resources provided by the Federal Emergency Management Agency's Emergency Management Institute.[33] He said this training is provided so everyone "is on the same page and using the same language."

The FBI regularly conducts and participates in WMD response exercises.

Since 2005, there have been two National Level Exercises involving a WMD incident response, one in 2005 and another in 2007. The FBI participated in both.[34] In addition, the FBI both sponsors WMD incident exercises and participates extensively in WMD incident exercises sponsored by other federal agencies and state or local law enforcement.

FBI exercise data showed that from FY 2005 to FY 2009, FBI field offices regularly participated in WMD-related exercises. Each year, the FBI participated in 168 to 215 WMD exercises, for a total of at least

[32] An example of a Laboratory Division specialized team is the Hazardous Evidence Analysis Team, which responds to contaminated areas to conduct traditional forensics, such as looking for fingerprints and hair samples.

[33] The Incident Command System is used to facilitate a common response structure for activities in command, operations, planning, logistics, and finance and administration.

[34] TOPOFF 3 and TOPOFF 4, now known as a National Level Exercises, were congressionally mandated counterterrorism exercises for senior law enforcement and first responder officials. TOPOFF 3 took place from April 4-8, 2005, and simulated incidents of biological and chemical agent attacks. TOPOFF 4 took place from October 15-20, 2007, and was designed to prevent or respond to a simulated terrorist attack using WMDs. A National Level Exercise in 2009 focused on prevention of a WMD attack, but not on responding in the event the attack was carried out.

936 WMD exercises (Table 2).[35] These exercises provided training to test responses to a chemical, biological, radiological, or nuclear device, as well as the use of improvised explosive devices. Of the 936 exercises, 496 (53 percent) were field training exercises and the remaining 440 (47 percent) were tabletop or command post exercises.[36]

**Table 2: FBI Field Offices' Participation in Exercises**

| Year | Number of Exercises |
|---|---|
| 2005 | 186 |
| 2006 | 188 |
| 2007 | 179 |
| 2008 | 168 |
| 2009 | 215 |
| **Total** | **936** |

Source: FBI WMD exercise data.

The FBI sponsored or co-sponsored some of the exercises, although most were sponsored by state and local law enforcement agencies. Table 3 shows the entities that sponsored the exercises in which the FBI participated.

**Table 3: Sponsoring Agencies and Number of WMD Exercises Conducted**

| Sponsoring Entity | Exercises |
|---|---|
| Amtrak | 1 |
| Coast Guard | 28 |
| Customs and Border Protection | 2 |
| Department of Agriculture | 6 |
| Department of Defense | 61 |
| Department of Energy | 16 |
| DHS | 5 |
| Environmental Protection Agency | 10 |
| FBI | 46 |

*Continued on next page*

[35] The documentation provided by the FBI regarding its field offices' participation in WMD response exercises included 45 of the 56 field offices.

[36] A tabletop exercise is an analysis of an emergency situation in an informal environment designed to elicit discussion as participants examine and resolve problems based on existing plans and identify where those plans need to be improved. A command post exercise simulates a response to an incident where the on-scene coordinator, responders, and technical representatives make response decisions, deploy manpower and equipment, maintain liaison with headquarters, and handle communications.

| Sponsoring Entity | Exercises |
|---|---|
| FBI and Department of Energy | 1 |
| Federal (not specified) | 26 |
| Federal Emergency Management Agency | 4 |
| Food and Drug Administration | 1 |
| International law enforcement agency | 8 |
| Local law enforcement agency | 653 |
| Multi-agency (not specified) | 5 |
| Nuclear Regulatory Commission | 13 |
| Postal Service | 50 |
| **Total** | **936** |

Source: FBI WMD exercise data.

Although the FBI was able to provide data regarding 45 of its 56 field offices, the information reported was not standardized. As reflected in the chart above, some field offices named the sponsoring entity, and others categorized the entity broadly (for example, "federal"). In addition, while most data described the type of WMD incident being tested, 50 of the 936 exercises did not. Thus, while the FBI is tracking its components' participation in exercises, this information could be more complete to better capture who is sponsoring the exercises, the entities participating, and the type of WMD response tested. The FBI also does not have one place where all the WMD exercise participation of its many separate units is documented. Nonetheless, we believe the available data clearly shows the FBI is conducting and participating in many exercises to prepare to respond to a WMD or other critical incident.

*After action reports are not consistently prepared.*

We found that the preparation of after action reports to document deficiencies identified during WMD response exercises is inconsistent. Conducting exercises is only the first step in ensuring an effective response capability – deficiencies revealed during exercises must be identified and addressed. The National Response Framework states that agencies must establish a corrective action program to improve their emergency operations and that, upon concluding an exercise, performance should be evaluated, weaknesses identified, and corrective action plans instituted.

The OIG requested FBI after action reports for any WMD exercise in which the FBI had participated. In response, the FBI provided after action reports for 25 exercises that took place between FY 2005 and

FY 2009.[37] Thirteen were written by the FBI, and 12 were written by other agencies. According to FBI data, however, of the 936 exercises in which the FBI participated, 473 had written after action reports and 335 exercises did not have written after action reports. The FBI's data did not show whether after action reports were written for the remaining 128 exercises.[38]

FBI officials gave conflicting responses regarding the requirement to write after action reports. Of the nine FBI officials we interviewed, four stated that written after action reports were required, and five officials said written after action reports were not required. Those officials who said written after actions reports were not required also said that after action reports were usually written by the federal, state, or local agency that hosted the exercise.

**The Department is not fully prepared to provide a coordinated response to a WMD incident.**

Although the FBI appears prepared to provide the initial response to a WMD incident, the Department as a whole is not fully prepared to provide a coordinated response. We found that no entity or individual has been assigned responsibility for central oversight of WMD response activities throughout the Department. In addition, the existing Department-level response policies and plans are not in compliance with national policy and are outdated. Further, the components' preparations for responding to a WMD incident, other than the FBI's, are inconsistent and not well coordinated. Moreover, appropriate component staff does not appear well trained in the unique requirements associated with responding to a WMD incident. The following sections provide greater detail on these deficiencies.

No entity provides central oversight of the Department's WMD-related activities.

We found that the Department has not assigned one entity or individual with the responsibility for the central oversight or management of WMD incident response policy development, planning

[37] Not all FBI field offices provided after action data. The FBI does not maintain its exercise data in a central location. Rather, exercise and after action data from the FBI was provided by field offices or various entities within FBI headquarters.

[38] The Operational Technology Division provided data for 22 exercises in which it participated and provided after action reports for 6 of the 22 exercises.

and training for responding to a WMD incident, or conducting WMD incident response exercises. The JMD Deputy Assistant Attorney General for Policy Management and Planning stated that "it is not clear" who has responsibility for managing WMD response activities in the Department. He noted that the uncertainty could create a "disaggregated" response to a WMD incident. Through our interviews of 36 senior officials involved in emergency response planning in the Department and the components' headquarters, it was clear that no person or entity is managing the overall Department's response activities.[39]

*The management of the Department's response program is uncoordinated and fragmented.*

Although no one entity handles management of the Department's operational response program, including a response to a WMD incident, some response functions are being handled by a Special Assistant to the Deputy Attorney General as well as senior staff at the NSD, EOUSA, and the FBI. These individuals also represent the Department in interagency policy and planning meetings for scenarios and exercises. The Special Assistant to the Deputy Attorney General stated that his principal role is to attend interagency meetings to ensure the Department is appropriately represented and responds to interagency requests. NSD and EOUSA officials stated they were primarily concerned with addressing legal questions and authorities that arise during a response. FBI officials said they were primarily concerned with ensuring that the FBI could meet its responsibilities at headquarters and at the site of an incident.

An EOUSA Attorney Advisor who was detailed to the Office of the Deputy Attorney General from 2002 to 2006 stated that he had been the central coordinator of the Department's response planning. He originally worked on national security policy, but after the terrorist attacks on September 11, 2001, was assigned to coordinate Department notices, meetings, and after action reports for response preparedness. He said he had been the "Senior Counsel for National Security Affairs" and the "*de facto* executive secretary" for correspondence about national security matters, including response preparedness. He said he had coordinated with the components and had met regularly with the Deputy Attorney General to provide updates on emergency preparedness. After the end of his detail, however, the position of Senior Counsel for National Security

[39] JMD's Security and Emergency Planning Staff is responsible for managing the Department's activities for continuity of operations planning, but not for managing the Department's incident response planning program.

Affairs was discontinued, and the responsibilities for emergency management activities were assigned to various personnel in the Office of the Deputy Attorney General and NSD.

Similarly, the NSD's National Crisis Management Coordinator told us he was detailed to the NSD to get the USAOs "back on track" after the first OIG review of USAO Critical Incident Response Plans (CIRP) in 2003, but he said he spent a considerable amount of time on other duties, including a criminal investigation.[40] As of December 2009, the NSD hired a Director of Preparedness and Response to work full time on emergency management for the NSD.

These individuals also told us that they believed the Department's operational response program lacks leadership and oversight. The EOUSA Attorney Advisor said the Department's current state of response preparedness had no overarching structure to make it work. Similarly, the NSD National Crisis Management Coordinator stated that the Department's response program lacked general leadership, centralization, and coordination. He added that nobody is looking at all of the components regarding response operations, particularly for responding to a WMD incident. He said that the Department "needs to get a better handle on this," but "if you're not at the Deputy [Attorney General] level no one is going to listen to you. You need clout." EOUSA's Counsel for Emergency Management and Crisis Response agreed, saying these issues need to be addressed at a Department level and the Office of the Deputy Attorney General or an Associate Deputy Attorney General needs to have the emergency planning portfolio.

In fact, the need for coordinated emergency management at the Department level has been previously identified by the Department. In January 2006, the Assistant Attorney General for Administration proposed an updated DOJ Order to address the need for better coordinated emergency response management at the Department level through a new Crisis Management Plan. The proposed Order assigned responsibilities for emergency response to a Crisis Management Committee that would have coordinated with the components to conduct

[40] The OIG conducted two reviews of USAO plans to respond to critical incidents. The first report, issued in 2003, was entitled *Review of the Critical Incident Response Plans of the United States Attorneys' Offices*, Evaluations and Inspections Report I-2004-001 (December 2003). A follow-up report was issued in 2007, entitled *Review of the Critical Incident Response Plans of the United States Attorneys' Offices*, Evaluations and Inspections Report I-2007-001 (January 2007).

periodic exercises of emergency operating plans to ensure that the Department maintains a high level of readiness.

A February 23, 2006, memorandum from staff of the Counterterrorism Section of the Criminal Division critiqued the proposed Crisis Management Plan. The memorandum suggested adding senior representatives from the Criminal Division, the NSD (when it was established), and EOUSA to the Crisis Management Committee. The memorandum concluded that the preparedness elements discussed in the proposed Order should not be addressed piecemeal with separate components. The memorandum stated that the

> Department is long overdue to design and implement an internal mechanism or structure to comprehensively and effectively address preparedness issues . . . . These issues demand a more organized, deliberate, and thoughtful approach, with more coordination both within the Department and with other agencies.

However, the proposed Order has not been made final.[41]

During our review, the Department began to take action in this area. A Deputy Attorney General memorandum dated August 31, 2009, directed the NSD, Office of Legal Policy, EOUSA, and JMD to each designate a senior-level position to coordinate interagency response and emergency management activities associated with interagency policy development and planning for man-made and natural disasters, national and regional exercises, and COOP or COG matters.[42] However, we believe that the designation of these individuals does not meet the need for a Department-level manager with the authority to direct emergency response efforts. Similar to the shortcomings the Criminal Division noted in the February 2006 memorandum described above, this latest approach risks perpetuating a fragmented program because these individuals report to their offices' senior management and will not be directing or managing the overall Department's preparation to respond to a WMD incident.

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[41] As of May 2010, the Department components had commented on the proposed Order, and the Order was awaiting review by the JMD Office of General Counsel.

[42] These representatives have formed the Crisis Response Working Group, which, in addition to the components identified in the memorandum, includes representatives from the Office of the Deputy Attorney General, Office of Legal Counsel, and Criminal Division.

*The Department has not updated its policies to reflect recent national policies.*

The existing Department-level response policies and plans are outdated and not in compliance with national policy. Since 1996, the federal government has taken various steps in response to the WMD threat, including issuing new national policies such as Homeland Security Presidential Directives-5 and 8. The National Response Framework and the National Incident Management System were established to attempt to promote an organized, coordinated response to critical incidents, including a WMD incident. In addition, the DHS was created in 2003, and the FBI was given new counterterrorism responsibilities.

However, the Department's polices and 1996 Critical Incident Response Plan have not been revised to reflect these changes. For example, they do not incorporate the principles and requirements of the National Response Framework or the National Incident Management System.[43] Also, the Department's Critical Incident Response Plan, which has not been updated since first approved by the Attorney General in May 1996, does not address the National Planning Scenarios.[44] To ensure the Department is prepared to respond to a WMD incident, we recommend that the Department's Critical Incident Response Plan be updated to include WMD scenarios.

*Department operational response policies and plans have not been fully implemented.*

DOJ Order 1900.6A, issued in December 1988, established a Crisis Management Committee to determine the Department's responsibility for the on-scene federal or Department response. However, we found that this committee does not exist.

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[43] Homeland Security Presidential Directives-5 and 8 require federal agencies to adopt the National Response Framework. Officials in the Office of the Deputy Attorney General and the Office of Legal Counsel confirmed that the National Response Framework is considered binding on the Department and its requirements should be the basis for the Department's policy.

[44] There are eight National Planning Scenarios. Four are WMD-specific and include attacks with nuclear, radiological, biological, and chemical weapons. The other four scenarios are explosives attack, natural disaster, cyber attack, and pandemic influenza.

Further, the May 1996 Critical Incident Response Plan advised the members of the Attorney Critical Incident Response Group to participate in law enforcement crisis scenario training that occurs throughout Department components, such as ATF, the DEA, and the USMS. However, we found that the Attorney Critical Incident Response Group also does not exist and that the expected coordination does not occur among the components.

Overall, we found no Department-sponsored training or coordination of exercises to test preparedness for responding to a WMD or other incident.

No law enforcement components other than the FBI have specific WMD operational response plans, although EOUSA and NSD have developed plans or guides for a legal response to a WMD incident.

We found ATF, the DEA, and the USMS each have groups or individuals to manage all-hazards responses, but no Department component, other than the FBI, assigns an entity specifically to prepare for WMD incidents.[45] Further, none of the components maintains plans, handbooks, and other resources specifically for responding to WMD incidents.

ATF's Chief of the Office of Field Operations said that ATF's plan in the event of a WMD incident is to not respond, but rather to provide support to the FBI. DEA and USMS officials stated that in the event of a WMD incident they would develop plans to support an FBI response if the FBI asked for support, after the components' headquarters approved the use of resources.

We found that EOUSA, the USAOs, and the NSD have developed plans or guides for a legal response to a WMD incident. The USAOs' role during a WMD incident is to provide legal guidance and oversight to the on-scene law enforcement response. To accomplish this, USAOs would rely on guidance from EOUSA and the NSD. EOUSA developed a template for all USAOs to use in creating their district-specific Critical Incident Response Plans, which describe the USAOs' role in the

[45] According to the USMS, it created a Hazardous Response Unit after the September 11, 2001, terrorist attacks to handle WMD incidents and training, but the unit was disbanded prior to 2006.

immediate aftermath of a WMD incident.[46] In addition, the NSD maintains operational guides to respond to a WMD incident. For example, the NSD maintains a guide for a legal response to an anthrax attack at a special event and for responding to an improvised nuclear device.

However, we found no efforts among the components to coordinate responding to a WMD incident. The FBI is the only component with plans, handbooks, and other resources for responding to a WMD incident, but officials from the other components said they have not seen the FBI's response materials. The Assistant Directors of the FBI's WMD Directorate and Critical Incident Response Group said the FBI would not object to letting other Department components review the plans, but none of the components have asked to do so.

No components other than the FBI provide training on responding to a WMD incident.

We found that Department components provide general training on responding to critical incidents, including training on the general principles of the National Response Framework, National Incident Management System, and the Incident Command System. However, except for the FBI, the components provide little or no training specifically on how to respond to a WMD incident.

The training programs at ATF, the DEA, EOUSA (and the USAOs), and the USMS are designed for critical incidents resulting from all hazards. We found that only two of the components' training programs included instruction, albeit minimal, on WMD response. The USMS requires all newly hired Deputy U.S. Marshals to complete a chemical, biological, radiological, and nuclear awareness course that instructs them on how to identify a hazardous agent release, activate emergency response operations, perform basic decontamination procedures, and use proper personal protective equipment in accordance with regulations.

[46] USAO Critical Incident Response Plans are designed to be all-hazards response plans. EOUSA's original template for responding to critical incidents was revised, in part, to ensure the USAOs' plans comply with the National Response Framework and National Incident Management System. In addition, EOUSA maintains an online reference, *USABook,* that provides guidance regarding statutes that could apply to chemical, biological, radiological, and nuclear incidents. Also, in 2009, EOUSA's Office of Legal Education published *Crisis Response and Related Litigation*, which describes the USAOs' role in emergency management and crisis response, including USAOs' response to acts of terrorism.

This training is given once to new Deputy U.S. Marshals, and no subsequent training in WMD response is provided.

EOUSA hosted a Regional Security Specialist and Crisis Management Coordinator Conference in November 2009. In attendance at the conference were USAO Crisis Management Coordinators.[47] At the conference, which we also attended, the coordinators received an overview of the National Response Framework. In addition, coordinators divided into working groups to discuss how they would respond to specific critical incidents, including an unexpected crisis, which may include a WMD incident. Officials from the following groups gave presentations on their components' roles and resources for responding to a critical incident:

- the Department,[48]
- state and local law enforcement agencies,
- ATF in ESF-13,
- the FBI's Critical Incident Response Group,
- the FBI's WMD Directorate, and
- the NSD's Counterterrorism Section.

We found that, except for these presentations to attendees of this particular conference (who were all USAO staff), the components did not coordinate with each other on the training they provide to their personnel. Each component provides training only on its own roles and responsibilities, and does not include in the training any information on the roles and responsibilities of other components that may be responding to the same incident.

The need for coordination was raised during the EOUSA Crisis Management Coordinator training described above. At the conference, a Special Assistant to the Deputy Attorney General said there needed to be more discussion and coordination about how the Department would

[47] Each USAO is required to designate a Crisis Management Coordinator. The Crisis Management Coordinator is to be a senior Assistant U.S. Attorney and is responsible for ensuring the USAO's coordination with law enforcement and emergency response agencies, ensuring the identification and organization of resources for providing legal advice during a critical incident, and improving the USAO's anticipation of crisis situations.

[48] The Department portion of the training focused on the role of the Department in helping create the national policy included in the National Response Framework. There was no discussion of Department planning or identifying Department or component roles and responsibilities.

respond to WMD incidents, and he encouraged USAO Crisis Management Coordinators to "get to know your Department personnel" because "the last thing you want is to have an incident and meet the responders for the first time." In addition, EOUSA's Counsel for Emergency Management and Crisis Response, a principal coordinator of the conference, noted that other Department components that would have a role in responding to an incident were not present at the training. He encouraged all USAO Crisis Management Coordinators to bring Department response personnel "to the table" to coordinate in their respective districts.

No component other than the FBI regularly conducts or participates in WMD response exercises.

As described previously, there have been two National Level Exercises involving a WMD incident response, one in 2005 and another in 2007. The FBI and ATF participated in both exercises, the USMS participated in the 2005 exercise, and two USAOs participated in the 2007 exercise. The DEA was not involved in either exercise.

At the regional, state, and local levels, officials in ATF and the USMS told us their personnel rarely participate in WMD exercises. FBI data confirmed that ATF, the USMS, and the USAOs, participated in only 22 of the 936 exercises.[49] DEA officials stated they have not been involved in any WMD exercises.

**The Department is not prepared to fulfill its role, assigned to it under the National Response Framework's ESF-13, to ensure public safety and security in the event of a WMD incident.**

As discussed above, the National Response Framework established the Department as the lead agency for ESF-13 with the responsibility to coordinate the use of federal law enforcement resources to maintain public safety and security if local and state resources are overwhelmed

[49] The number of Department components who participated in the WMD exercises is likely understated because 11 FBI field offices did not respond to our request for information on exercises. Some other field offices omitted information such as the participation of other Department components in exercise. In addition, FBI data for the 46 reporting field offices noted that no Department components participated in 591 of the 936 exercises, and it was unknown whether any component other than the FBI participated in 323 of the exercises.

during an incident.[50] The Department delegated the responsibility for implementing its ESF-13 activities to ATF.

However, we found that the Department is not prepared to coordinate federal law enforcement response activities if it is called upon to ensure public safety and security in accordance with ESF-13 in the event of a WMD incident.[51] ESF-13 staff said that, in the event of a WMD incident "we are totally unprepared." They added that, "right now, being totally effective would never happen. Everybody would be winging it."

In January 2008, ATF proposed a Concept of Operations Plan to provide a structure for the Department to implement its ESF-13 responsibilities. Yet, as of March 2010, that Concept of Operations Plan was still in draft and had not been approved by the Department.[52] In addition, several elements within the draft Concept of Operations Plan that are essential to the Department's ability to fulfill its responsibilities for coordinating the federal law enforcement activities in an ESF-13 activation remained incomplete. As discussed below, the incomplete elements include staffing national and regional coordinator positions; training staff in ESF-13 operations; cataloging law enforcement resources available in the event of an ESF-13 activation; participating in National Level Exercises to test preparedness; and deputizing ESF-13 law enforcement personnel.

Staffing national and regional coordinator positions. The Department and ATF have not made all the necessary personnel assignments to manage ESF-13 activities. The draft Concept of

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[50] The National Response Framework outlines 10 specific responsibilities for the Department to coordinate. See Appendix III for the Department's ESF-13 responsibilities.

[51] These ESF-13 activities, include: (1) providing basic law enforcement assistance such as conducting routine patrols and making arrests; (2) issuing identification badges to emergency responders and other personnel needing access to a controlled area and verifying emergency responder credentials; (3) providing security forces to control access to the incident site and critical facilities; (4) providing officers for traffic and crowd control; and (5) providing for protection of emergency responders and other workers operating in a high threat environment.

[52] Although the Concept of Operations Plan has not been approved by the Department, according to ATF it has been vetted and approved through the 13 agencies involved in ESF-13 activities on multiple occasions. ATF stated that future iterations of the Concept of Operations Plan would not contain the term "draft."

Operations Plan proposed a national-level management structure, housed at ATF headquarters, consisting of an ESF-13 National Coordinator, who has been assigned, and a Deputy National Coordinator, who has not been assigned, selected by ATF and approved by the Department. The ESF-13 National Coordinator is to manage all routine ESF-13 planning activities.

Until April 2010, ATF had only four administrative staff working on ESF-13 activities as a collateral duty. As of April 2010, ATF increased its authorized ESF-13 staffing to 13 headquarters positions, although the positions remained largely unstaffed, with only 7 of the 13 positions filled. ATF currently has two Special Agents, four professional support personnel, and one contractor dedicated to ESF-13.

According to the Concept of Operations Plan, the National Coordinator and Deputy National Coordinator are to be supported by an interagency contingent of five Sector Coordinators, each responsible for representing ESF-13 matters in coordination with Federal Emergency Management Agency regional offices.[53] ATF initially planned to provide some of the Sector Coordinators and requested that the remaining coordinators be provided by other ESF-13 agencies. However, only one agency, the DHS's Customs and Border Protection, responded to ATF's request. As of March 18, 2010, ATF had decided not to staff the Sector Coordinator position from interagency personnel but rather to staff the position with contractors to coordinate with Federal Emergency Management Agency regional offices. Until the contractors are hired, ATF has temporarily assigned ATF liaisons in each of the Federal Emergency Management Agency regions.

Additionally, while the Department designated a Department ESF-13 Coordinator in early 2009, as called for in the draft Concept of Operations Plan, the individual selected currently performs this function as a collateral duty. The Department ESF-13 Coordinator works with the ATF ESF-13 National Coordinator, Deputy National Coordinator, and other ESF-13 management personnel, but is not involved in routine planning. The Department Coordinator is supposed to administer all aspects of the support in the event of an ESF-13 activation, including coordination between ATF's ESF-13 staff and other federal officials. The current Department ESF-13 Coordinator divides his time between ESF-13 responsibilities and his work for the U.S. Attorney's Office in the

[53] Each of the 10 Federal Emergency Management Agency regions has a Regional Interagency Steering Committee that coordinates interagency and intergovernmental issues related to disaster planning and operations.

Eastern District of Louisiana. As of May 2010, a replacement ESF-13 Coordinator had been selected, but had not entered the position.

Training. ATF has provided minimal training on implementing ESF-13 responsibilities for ATF field office personnel, support agency personnel, and state and local emergency operations officials. ESF-13 staff said that ATF field staff have not been trained to respond to a WMD incident. The draft Concept of Operations Plan requires "training for all levels of personnel involved in the program." The training is intended to enable ATF field office personnel to provide initial situation assessments from an affected area to aid in the determination of the appropriate response to requests for assistance. Training is also required to prepare staff to resolve conflicting demands for public safety and security resources; coordinate backup support from other geographical regions to an affected area; and ensure that responding agencies are provided with information on known hazards, mission requirements, appropriate vaccinations, credentials, and personal protective equipment.

ATF's ESF-13 staff said training for ATF field office personnel, support agency personnel, and state and local emergency operations officials has not been fully implemented. According to ESF-13 staff, ATF has trained only ATF personnel in Florida, Louisiana, Texas, Mississippi, and Alabama field offices for an ESF-13 activation resulting from a hurricane. ATF has provided field office ESF-13 Coordinators with an ESF-13 briefing paper and slide show, and the draft Concept of Operations Plan as guidance for how to respond in an ESF-13 activation. ATF is in the process of training ATF Assistant Special Agents in Charge (ASAC) in the requirements of being an ESF-13 Coordinator. The training curriculum familiarizes these ASACs with ESF-13's role in the National Response Framework, the ESF-13 Concept of Operations Plan, the Federal Emergency Management Agency mission assignment process, and ESF-13's interagency relationships. ATF has completed two of these training sessions during FY 2009 and one during FY 2010. Two additional training sessions are scheduled for May and June 2010.[54] Also, ATF provided similar ESF-13 training to approximately 20 of its supervisors other than ASACs in FY 2009.

[54] During February 2010, ATF conducted ESF-13 training for approximately 45 members of its ESF-13 Assessment Teams. The Assessment Teams consists of ATF ASACs, ATF Group Supervisors, ATF Crisis Management Coordinators, and personnel from the USMS and DHS's Federal Emergency Management Agency. The Assessment Teams coordinate the needs for support with state emergency managers and ESF-13 Coordinators through embedded ESF-13 liaisons in the state emergency operations centers.

Cataloging Resources. ATF has not developed a catalog of law enforcement resources – people and equipment – available to be deployed in an ESF-13 activation. The draft Concept of Operations Plan requires ATF to screen and match approved ESF-13 mission assignments with available Department and other federal law enforcement resources. However, ATF does not have information on the resources available from all ESF-13 agencies and does not have specific resource information for Department components, particularly at the local level.

Resource information is critical for ATF to identify the need for ESF-13 support and analyze potential factors (for example, mapping, modeling, and forecasting for crowd size, impact of weather, and other conditions) that may affect resource allocations and requisite actions affecting public safety and security in the event of a WMD incident. ATF lacks information on ESF-13 agency resources because the other ESF-13 agencies have not responded fully to ATF's requests for information. Further, because of the lack of staffing, ATF has not designated anyone to follow up on the requests and could not conduct the logistical resource planning if the data were made available.

Participation in National Level Exercises. ATF has not tested its preparedness to carry out its ESF-13 responsibilities in any National Level Exercises. The draft Concept of Operations Plan states that "ATF will ensure ESF-13 participation is included in National Level Exercises when appropriate to support the exercise scenarios."[55] ESF-13 staff explained that although they participated in the TOPOFF 4 National Level Exercise, they did not exercise ESF-13 functions. Instead, ATF's exercise role was to provide support to the FBI.[56] The ESF-13 Program Manager said ATF has not had the opportunity to evaluate ESF-13 operational readiness because ESF-13 has not been included in National Level Exercises and ATF has not conducted any other operational exercise. Participating in National Level Exercises will enable ATF to fulfill the Department's responsibility for conducting an evaluation of operational readiness.

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[55] The exercise scenarios are designed to test a response to a specific man-made critical incident or natural disaster, such as an improvised nuclear device or an earthquake.

[56] The TOPOFF 4 National Level Exercise was a congressionally mandated terrorism preparedness exercise involving top officials at every level of government. TOPOFF 4 was sponsored by the DHS and involved a 2-year cycle of seminars, planning events, and exercises that culminated in a full-scale assessment of the nation's capacity to prevent, prepare for, respond to, and recover from terrorist attacks involving WMDs.

Deputation. The Concept of Operations Plan states that ESF-13 federal law enforcement officers "should not be deployed without being deputized as a Deputy U.S. Marshal." ESF-13 staff explained that ATF is still in the process of determining how deputation will be implemented during an ESF-13 activation. The ESF-13 Program Manager said ATF has requested a written legal opinion from the Department that explains the authority of federal law enforcement officers under ESF-13 so that those law enforcement officers who are deputized know the extent of their authorities. The NSD's Director of Preparedness and Response said that this lack of clarity regarding deputation could "paralyze an agent in the field who doesn't know if his actions are covered."

When we asked why ATF had been unable to implement the ESF-13 Concept of Operations Plan, ATF officials stated that ATF lacked the funds to fulfill the Department's ESF-13 responsibilities. We reviewed ATF budget documents and found the Department's budget request for FY 2011 was the first time that funding designated specifically for ESF-13 activities was included in the Department's budget request to the President.[57] The requested funding would provide for one ESF-13 National Coordinator, two program managers, two intelligence analysts, one management analyst, and one program analyst. ATF also requested $34,000 to fund two nationwide training sessions per year to provide ESF-13 representatives with the necessary skills and knowledge to successfully develop and maintain relationships with ESF-13 state and local law enforcement partners.

**In the National Capital Region, with the exception of preparing for special events, WMD incident response planning depends primarily on FBI resources and capabilities.**

The National Capital Region (NCR) is a potential target for terrorists who may attempt to use WMD in an attack. In this review, we examined the preparations of Department component field offices in the NCR to respond to a WMD attack.

As described in the sections above, the FBI has created plans and assigned other resources for responding to a WMD incident and participates in exercises that specifically include WMD scenarios in the NCR. Further, we found that components regularly work with each other, with other federal agencies, and with state and local law

[57] In 2006, as a part of the budget formulation for FY 2008, ATF requested funding to support ESF-13 activities, but this request was not included in the Department's budget request for FY 2008.

enforcement agencies to prepare to respond to critical incidents that may occur during the frequent special events in the NCR. This regular coordination for special events builds knowledge and relationships that help prepare components for responding to incidents in the NCR. Nonetheless, as previously noted in the report, WMD incident response planning in the NCR depends primarily on FBI resources and capabilities, and other components have conducted minimal WMD-specific planning or training. In addition, some components' personnel in the NCR were not familiar with the responsibilities assigned to the Department in the event ESF-13 is activated and did not know that ATF is the Department's designated lead coordinator of ESF-13.

The FBI has a WMD-specific plan and guides, and conducts exercises on responding to a WMD incident in the NCR.

The FBI's Washington Field Office is the only component field office in the NCR with a written plan and checklist to respond specifically to a WMD incident in the NCR. The FBI's plan identifies how the FBI will work with other non-Department agencies and state and local law enforcement and emergency response agencies. However, the FBI plan does not include any stated role for the Department's other law enforcement components in the NCR. FBI NCR officials said if the FBI needed support for its response to a WMD incident from the other components' NCR field offices, they would contact those field offices through their representatives on the Joint Terrorism Task Force to coordinate the support.[58]

Additionally, the FBI's Washington Field Office conducts exercises on responding to WMD incidents in the NCR. According to FBI exercise data, from FY 2005 through FY 2009 the FBI Washington Field Office led or participated in 29 field training or tabletop WMD exercises. These exercises included state and local law enforcement, as well as other federal agencies, including the DHS and the Departments of Defense and Energy. However, other DOJ component field offices did not participate in the 29 FBI exercises and, other than scheduled special events, did not participate in any other WMD response activities with the FBI. Our interviews with other components' NCR field office managers confirmed that they do not participate in WMD exercises or any other WMD response activities with the FBI except for special events.

[58] Joint Terrorism Task Forces operate in 100 cities nationwide. They are based out of the 56 FBI field offices and 10 smaller offices around the country and include representatives from local, state, and federal law enforcement agencies.

NCR field offices regularly coordinate with each other to prepare to respond to critical incidents that may occur during special events.

We found that NCR field offices regularly coordinate with each other to prepare to respond to critical incidents, including WMD incidents, which may happen during the special events that frequently occur in the NCR. Many of these events are unique to the NCR, such as presidential inaugurations, State of the Union Addresses, visits by heads of state, and mass political demonstrations. Planning for these events is led by non-Department agencies within the NCR, and Department NCR field offices participate and coordinate through the FBI's local Joint Terrorism Task Force.

The field offices also meet regularly with the local police departments, as well as other federal, state, and local law enforcement agencies to discuss threats and prepare for these special events. In addition, ATF, DEA, and FBI officials told us they meet with the Metropolitan Washington Council of Governments to discuss incident response in the NCR.[59] USMS officials said they do not participate in such meetings. As a result of the frequent coordination for special events, NCR field office staff told us they are aware of other agencies' roles and the resources that are available from them if a WMD incident should occur during a special event. However, we believe that WMD planning for special events does not adequately prepare NCR components for a WMD incident that occurs outside of a special event. For example, during special events roles and responsibilities are pre-determined and resources are on standby, which would not be the case for incidents that occur at other times.

Most NCR component field offices have conducted little or no planning specifically for responding to a WMD incident and have no defined role in the FBI's WMD response plans.

Although the NCR field offices' preparations for special events include planning for WMD incidents, we found that preparations for a WMD incident that might occur at times other than during a special event were lacking.

[59] The Metropolitan Washington Council of Governments is a regional organization of 21 Washington-area local governments that develops regional responses to such issues as public safety, the environment, affordable housing, economic development, health and family concerns, human services, population growth, and transportation.

The ATF, DEA, and USMS field offices had no plans that specifically addressed responding to a WMD incident. Although NCR USAOs maintained all-hazard Critical Incident Response Plans, we found no specific WMD-related response guidance as contained in EOUSA's Critical Incident Response Plan template.[60] When we asked field office officials from other components why they did not have WMD-specific plans, they stated that they believed the FBI would be the Department's lead responder in the event of a WMD incident in the NCR and that their roles would be limited to supporting the FBI's response. Both ATF's Acting Special Agent in Charge and the DEA's Special Agent in Charge of their Washington field offices said that they believed the FBI is aware of their agencies' capabilities and resources and would request them as needed. When asked if they were familiar with the FBI's WMD response plans, only the USAO officials said that they were aware of the plans. ATF, DEA, and USMS field office officials were not familiar with the plans. Further, the ATF, DEA, and USMS field office officials stated that they had not asked to see the FBI's plans to determine whether they would be included in the FBI's response.

The Special Agent in Charge of the FBI's Washington Field Office Counterterrorism Division confirmed that no other component had asked to review the WMD response plan, but said he "did not see why it would be a problem" for other Department components to review it.

Some component officials in NCR field offices are not aware of ESF-13 or ATF's role as the Department's lead coordinator if ESF-13 is activated during a WMD incident.

To determine if the Department components' field offices are prepared to carry out the Department's responsibilities for ensuring public safety and security if ESF-13 was activated in the NCR during a WMD incident, we asked 12 NCR field office managers about ESF-13 requirements and assignments. Only three officials (one each from ATF, the FBI, and the USAO) knew of the Department's responsibilities under ESF-13 and that ATF is designated as the Department's lead coordinator if ESF-13 is activated. Another three officials (one from the FBI field office and two USAO staff) knew about the Department's ESF-13 responsibilities, but not that ATF is the Department's lead coordinator. Six officials (one each from the FBI and the DEA, and four USMS

[60] We reviewed the Critical Incident Response Plans for the District of Columbia and the Eastern District of Virginia.

officials) were not familiar with either ESF-13 or ATF's designated role for the Department.

This lack of awareness on the part of field office managers regarding ATF and ESF-13 is problematic. Field office managers should be familiar with how their components would participate in a coordinated national response to a WMD incident. Although requests for support would most likely come from headquarters to the field offices, effective coordination of the federal, state, and local response would be critical during an ESF-13 activation. The lack of familiarity regarding national plans, such as ESF-13, could inhibit a coordinated response and valuable time could be wasted in providing needed resources, as was seen during the response to Hurricane Katrina in 2006.[61]

In sum, although law enforcement agencies in the NCR coordinate regularly because of the preparations and cooperation required for frequent special events, we believe improvements are needed to ensure NCR field offices are prepared to quickly and safely respond to a WMD incident. In a WMD incident, agencies' roles are not specified and resources are not pre-positioned as during a special event. Moreover, the hazard presented by a WMD – as opposed to conventional or improvised explosives or natural disasters – is unique. Without WMD-specific training and response plans, responders may be at greater risk of becoming casualties. Because the component field offices in the NCR other than the FBI have no WMD-specific response plans or training, and have not participated in WMD-specific exercises, it is uncertain that they are fully prepared to safely and effectively contribute to the Department's overall response in the event of a WMD incident. Moreover, the lack of awareness regarding the Department's ESF-13 responsibilities, and ATF's authority to serve as the lead coordinator for those activities, could delay a coordinated federal law enforcement response to a WMD incident that requires activation of ESF-13 in the NCR.

[61] The White House, *The Federal Response to Hurricane Katrina* (February 2006), p. 53.

## CONCLUSION AND RECOMMENDATIONS

Our review concluded that only the FBI has taken adequate steps to prepare to respond to a potential WMD attack. The FBI's WMD Directorate manages its WMD operational response activities and establishes the responsibilities for its units that will respond. The FBI has headquarters and field office operations plans, handbooks, and other resources for responding to WMD incidents. The FBI regularly provides WMD-specific training to its personnel who are likely to respond to a WMD incident. The FBI regularly conducts or participates in WMD response exercises, having taken part in over 900 exercises from FY 2005 through FY 2009. FBI field offices track their participation in exercises, although after action reports based on the exercises are not consistently prepared.

However, neither the Department nor the components within the Department have implemented adequate WMD response plans. The Department has not designated an entity or individual to provide central oversight of WMD-related activities, and responsibility for management of the Department's response program is uncoordinated. The Department has not updated its policies to reflect recent national policies, existing policies have not been fully implemented, and we found no Department policies or plans for responding to a WMD incident.

Aside from the FBI, the Department's other law enforcement components' preparations for responding to a WMD incident are also lacking. Officials of ATF, the DEA, and the USMS all indicated that they would support the FBI's response to a WMD incident. However, none of these components has specific WMD operational response plans, provides training for responding to a WMD incident, or regularly participates in WMD response exercises. We found the response planning among all the components, including the FBI, to be inconsistent and not well coordinated.

In addition, the Department has not adequately prepared to coordinate federal law enforcement activities if it is called upon to ensure public safety and security in accordance with ESF-13 in the event of a WMD incident. A Concept of Operations Plan proposed in January 2008 to guide the Department in implementing its ESF-13 responsibilities was still in draft as of March 2010. ATF has not assigned adequate staff to ensure all ESF-13 planning and coordination activities required by the National Response Framework are carried out. ATF has not provided adequate training in ESF-13 responsibilities to its own staff or personnel

from other ESF-13 agencies. ATF also lacks comprehensive information on law enforcement resources that could be deployed during an incident.

In the National Capital Region, coordination is aided by the regular preparations and cooperation required for the frequent special events in the region. However, other than the FBI, Department field offices in the NCR have no WMD-specific response plans or training and have not participated in WMD-specific exercises. Moreover, we found a lack of awareness regarding the Department's ESF-13 responsibilities and ATF's authority to serve as the lead coordinator for those activities, which could delay the execution of a coordinated federal law enforcement response in the event of a WMD incident in the NCR.

In this report, we make five recommendations to help the Department better prepare to respond to a WMD incident and to fulfill its responsibilities under ESF-13. We recommend that the Department:

1. Designate a person or office at the Department level with the authority to manage the Department's WMD operational response program.

2. Update its response policies and plan to conform them to the National Response Framework and the National Incident Management System.

3. Require Department components to update their own policies and plans to reflect the updated Department guidance, and to reflect the need for adequate coordination among Department components in responding to WMD incident.

4. Establish effective oversight to ensure that components maintain WMD response plans, participate in training and exercises, and implement a corrective action program in response to such exercises.

5. Ensure that the Department is prepared to fulfill its emergency support function responsibilities under the National Response Framework, including reviewing the designation of ATF as the Department's lead agency to coordinate public safety and security activities, approving a Concept of Operations Plan, and staffing national and regional coordinator positions.

## APPENDIX I: METHODOLOGY OF THE OIG REVIEW

The methodology used in this review consisted of interviews with officials from the Department and its components, document review, data analysis, and observation of component training. In addition, site visits were conducted at the FBI's Critical Incident Response Group and facilities in Quantico, Virginia, and at the FBI and ATF field offices in the National Capital Region.

### Interviews

To obtain an overview of the Department and its components' activities concerning operational response, we conducted 79 in-person and telephone interviews with personnel from the Department, the components included in the review, and other federal agencies. Table 4 lists the individuals interviewed.

**Table 4: Officials Interviewed During the Review**

| Organization | Position |
|---|---|
| Office of the Deputy Attorney General | Special Assistant to the Deputy Attorney General |
| | Special Counsel to the Deputy Attorney General |
| Justice Management Division | Director, SEPS |
| | Associate Director, SEPS |
| | Attorney Advisor, SEPS |
| | Emergency Management Specialist, SEPS |
| | Deputy Assistant Attorney General, Policy, Management, and Planning |
| National Security Division | Assistant Attorney General |
| | Counsel |
| | National Crisis Management Coordinator, Counter Terrorism Section |
| | National Anti-Terrorism Advisory Council Coordinator, Counter Terrorism Section |
| | Chief of Staff |
| Criminal Division | Director, Security and Operations Support |
| | Physical Security Specialist |
| | Emergency Management Specialist |
| ATF | Acting Assistant Director of Field Operations |
| | Special Agent in Charge and National ESF-13 Coordinator, Special Events Branch |
| | Deputy Chief, ATF Arson and Explosives Program Division |

| Organization | Position |
|---|---|
| | Assistant Special Agent in Charge, Washington Field Division |
| | ATF Counsel, Washington Field Division |
| | Program Manager, ATF Critical Incident Response Program |
| | Contractor, ATF Critical Incident Response Program |
| | Chief, ATF Office of Field Operations, Special Operations Division |
| BOP | Chief, Emergency Preparedness |
| | Emergency Management Specialist |
| DEA | Section Chief, Office of Emergency Management, Command Center and Emergency Preparedness Section |
| | Deputy Chief, Command Center and Crisis Preparedness Section |
| | Special Agent in Charge, Washington Field Office |
| | Assistant Special Agent in Charge, Washington Field Office |
| EOUSA | Attorney Advisor, Office of the Director |
| | Counsel, Emergency Management and Crisis Response, Office of the Director |
| | National Emergency Management Coordinator |
| FBI | Assistant Director, Weapons of Mass Destruction Directorate |
| | Assistant Director, Critical Incident Response Group |
| | Section Chief, Critical Incident Response Group |
| | Supervisory Special Agent/Unit Chief, Crisis Management Unit Critical Incident Response Group |
| | Supervisory Special Agent, Crisis Management Unit Critical Incident Response Group |
| | Chief, Operations Support Branch, Crisis Management Unit Critical Incident Response Group |
| | Special Agent/Unit Chief, Weapons of Mass Destruction Directorate |
| | Unit Chief, Executive Strategy Unit, Weapons of Mass Destruction Directorate |
| | Unit Chief, WMD Operations Unit 1, Weapons of Mass Destruction Directorate |
| | Countermeasures and Preparedness Section Chief, Weapons of Mass Destruction Directorate |
| | Unit Chief, WMD Countermeasures Unit, Weapons of Mass Destruction Directorate |
| | Supervisory Special Agent, WMD Countermeasures Unit, Weapons of Mass Destruction Directorate |
| | Special Agent, FBI Liaison to DHS |
| | Assistant Director, FBI Laboratory Division, Weapons of Mass Destruction Directorate |
| | Chief, Operational Response Section, FBI Laboratory Division, Weapons of Mass Destruction Directorate |
| | Unit Chief, National Preparedness Unit, Weapons of Mass |

| Organization | Position |
|---|---|
| | Destruction Directorate |
| | Supervisory Special Agency, National Preparedness Unit, Weapons of Mass Destruction Directorate |
| | Unit Chief, Strategic Information Operations Center |
| | Unit Chief, Crisis Coordination Administration Unit, Strategic Information Operations Center |
| | Assistant Director, Operational Technology Division |
| | Supervisory Special Agent/Assistant Section Chief, Technical Programs Section, Operational Technology Division |
| | Unit Chief, Technical Programs Section, Operational Technology Division |
| | Supervisory Special Agent, National Capital Response Squad, Washington Field Office |
| | Special Agent in Charge, Counterterrorism Division, Washington Field Office |
| | Special Agent, National Capital Response Squad, Washington Field Office |
| Office of Legal Counsel | Special Counsel |
| Office of Legal Policy | Chief of Staff and Senior Counsel |
| | Management and Program Analyst |
| USAO | District of Washington, D.C., Assistant U.S. Attorney |
| | District of Maryland, Assistant U.S. Attorney |
| | Eastern District of Virginia, Assistant U.S. Attorney |
| USMS | Chief Inspector, Office of Emergency Management |
| | Inspector, Office of Emergency Management |
| | Deputy Assistant Director of Judicial Operations, Judicial Security Division |
| | Deputy Assistant Director of Judicial Services, Judicial Security Division |
| | Chief, Office of Security Systems, Judicial Security Division |
| | Assistant Chief Deputy for the District of Maryland |
| | Supervisory Deputy, United States Marshal, Washington, D.C., Superior Court |
| | Judicial Security Inspector, Deputy U.S. Marshal, District of Washington, D.C. |
| | Judicial Security Inspector, Eastern District of Virginia |
| Department of Homeland Security | Assistant Deputy Administrator, National Preparedness Directorate, Federal Emergency Management Agency |
| | Associate Director, Office of National Capital Region Coordination, Federal Emergency Management Agency |
| | Branch Chief, Operations Planning Branch, Disaster Operations Directorate, Federal Emergency Management Agency |

| Organization | Position |
|---|---|
| | Director, Preparedness and Mitigation, Office of the Inspector General |
| | Inspector, Office of the Inspector General |
| | Assistant Administrator, National Integration Center, Federal Emergency Management Agency |
| | Director, Preparedness Policy, Planning, and Analysis, Federal Emergency Management Agency |

**Document Reviews and Data Analyses**

We reviewed Homeland Security Presidential Directives, national policies, Department orders, and component policies pertaining to operational response. We also reviewed component training data to determine whether the Department or its components were providing the required training.

We performed a quantitative analysis of the relevant interviewees' responses to determine the extent to which the Department and its components have prepared to respond to a WMD incident. We also reviewed exercise data from the FBI in the review concerning WMD incidents to determine the frequency of participation in WMD-related exercises. We specifically requested that the FBI provide data regarding the exercises it had conducted that involved responding to a WMD incident.

**Site Visits**

We visited ATF and FBI field offices in the National Capital Region. The National Capital Region is composed of the District of Columbia and nearby jurisdictions in Virginia and Maryland. We also contacted by telephone the DEA and USMS field offices in the District of Columbia and Virginia, as well as the U.S. Attorneys' Offices in the District of Columbia, the Eastern District of Virginia, and Maryland. Because the FBI has a significant role in operational response, we also visited the FBI's Critical Incident Response Group and the Operational Technology Division in Quantico, Virginia, to learn more about the FBI's capabilities. In addition, we attended EOUSA's Regional Security Specialist and Crisis Management Coordinator conference in Columbia, South Carolina.

## APPENDIX II: EMERGENCY SUPPORT FUNCTIONS AND ESF COORDINATORS

**ESF-1 – Transportation**
**ESF Coordinator: Department of Transportation**

- Aviation/airspace management and control
- Transportation safety
- Restoration and recovery of transportation infrastructure
- Movement restrictions
- Damage and impact assessment

**ESF-2 – Communications**
**ESF Coordinator: DHS (National Communications System)**

- Coordination with telecommunications and information technology industries
- Restoration and repair of telecommunications infrastructure
- Protection, restoration, and sustainment of national cyber and information technology resources
- Oversight of communications within the federal incident management and response structures

**ESF-3 – Public Works and Engineering**
**ESF Coordinator: Department of Defense (U.S. Army Corps of Engineers)**

- Infrastructure protection and emergency repair
- Infrastructure restoration
- Engineering services and construction management
- Emergency contracting support for life-saving and life-sustaining services

**ESF-4 – Firefighting**
**ESF Coordinator: Department of Agriculture (U.S. Forest Service)**

- Coordination of federal firefighting activities
- Support to wildland, rural, and urban firefighting operations

**ESF-5 – Emergency Management**
**ESF Coordinator: DHS (Federal Emergency Management Agency)**

- Coordination of incident management and response efforts
- Issuance of mission assignments
- Resource and human capital

- Incident action planning
- Financial management

**ESF-6 – Mass Care, Emergency Assistance, Housing, and Human Services**
**ESF Coordinator: DHS (Federal Emergency Management Agency)**

- Mass care
- Emergency assistance
- Disaster housing
- Human services

**ESF-7 – Logistics Management and Resource Support**
**ESF Coordinator: General Services Administration and DHS (Federal Emergency Management Agency)**

- Comprehensive, national incident logistics planning, management, and sustainment capability
- Resource support (facility space, office equipment and supplies, contracting services, etc.)

**ESF-8 – Public Health and Medical Services**
**ESF Coordinator: Department of Health and Human Services**

- Public health
- Medical
- Mental health services
- Mass fatality management

**ESF-9 – Search and Rescue**
**ESF Coordinator: DHS (Federal Emergency Management Agency)**

- Life-saving assistance
- Search and rescue operations

**ESF-10 – Oil and Hazardous Materials Response**
**ESF Coordinator: Environmental Protection Agency**

- Oil and hazardous materials (chemical, biological, radiological, etc.) response
- Environmental short- and long-term cleanup

**ESF-11 – Agriculture and Natural Resources**
**ESF Coordinator: Department of Agriculture**

- Nutrition assistance
- Animal and plant disease and pest response
- Food safety and security

- Natural and cultural resources and historic properties protection
- Safety and well-being of household pets

**ESF-12 – Energy**
**ESF Coordinator: Department of Energy**

- Energy infrastructure assessment, repair, and restoration
- Energy industry utilities coordination
- Energy forecast

**ESF-13 – Public Safety and Security**
**ESF Coordinator: Department of Justice**

- Facility and resource security
- Security planning and technical resource assistance
- Public safety and security support
- Support to access, traffic, and crowd control

**ESF-14 – Long-Term Community Recovery**
**ESF Coordinator: DHS (Federal Emergency Management Agency)**

- Social and economic community impact assessment
- Long-term community recovery assistance to states, tribes, local governments, and the private sector
- Analysis and review of mitigation program implementation

**ESF-15 – External Affairs**
**ESF Coordinator: DHS**

- Emergency public information and protective action guidance
- Media and community relations
- Congressional and international affairs
- Tribal and insular affairs

Source: National Response Framework.

## APPENDIX III: DEPARTMENT'S ESF-13 RESPONSIBILITIES

| Responsibility | Department ESF-13 Responsibilities |
|---|---|
| 1 | • Serves as the headquarters and regional-level ESF-13 coordinator and primary agency.<br>• Represents the ESF-13 agencies on the ESF Leaders Group and the Regional Interagency Steering Committee.<br>• Coordinates preparedness activities with ESF-13 supporting agencies. |
| 2 | • Provides expertise on public safety and security issues to the Domestic Readiness Group, when requested. |
| 3 | • Manages ESF-13 preparedness activities and conducts evaluation of operational readiness, including a roster and description of public safety and security activities. |
| 4 | • Maintains close coordination during operations between the affected regional office(s), the National Response Coordination Center, other ESFs, local FBI Joint Terrorism Task Forces, and the National Joint Terrorism Task Force, as required. |
| 5 | • Ensures that all activities performed under the purview of ESF-13 are related to the mission of ESF-13. If any potential for conflict exists, it is the Department's responsibility to resolve these issues prior to accepting the mission assignment. |
| 6 | • Facilitates resolution of any conflicting demands for public safety and security resources, expertise, and other assistance.<br>• Coordinates backup support from other geographical regions to the affected area. |
| 7 | • Processes mission assignments, tracks resource allocation and use, and facilitates reimbursement to assisting departments and agencies via emergency management funding mechanisms and authorities, if appropriate. |
| 8 | • Obtains initial situation assessment from field units and determines appropriate management response to anticipated or current requests for assistance. |
| 9 | • Obtains and distributes incident contact information to supporting agency coordinators for emergency responders. |
| 10 | • Assesses requests before committing resources, and ensures responding agencies are provided with information on known hazards, mission requirements, appropriate vaccinations, credentials, and personal protective equipment to operate in the environment to which they are assigned. |

Source: National Response Framework, Annex 13.

## APPENDIX IV: THE OFFICE OF THE DEPUTY ATTORNEY GENERAL RESPONSE TO DRAFT REPORT

**U.S. Department of Justice**

Office of the Deputy Attorney General

Associate Deputy Attorney General

Washington, D.C. 20530

May 25, 2010

The Honorable Glenn A. Fine
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

**Re: Office of the Inspector General's Report on the Department's Preparation to Respond to a Weapons of Mass Destruction (WMD) Incident**

Dear Mr. Fine:

I am writing to provide the Department of Justice's formal response to the above-referenced report.

We appreciate the work of the Office of the Inspector General (OIG) in reviewing the way in which Department components have prepared to respond to a Weapons of Mass Destruction (WMD) incident. Preventing terrorist attacks, including WMD attacks, is the Department's highest priority. The Department has tasked the Federal Bureau of Investigation (FBI) with lead responsibility for preventing WMD attacks in the United States and for responding to such attacks should they occur. FBI brings specialized investigatory, emergency response, and forensic capabilities to that endeavor. We agree with the OIG that the FBI has taken appropriate steps to prepare to respond to a potential WMD attack and that the FBI's substantial training regime to investigate and prevent WMD threats is a benefit to the country. We also agree that the FBI is not the only Department entity responsible for addressing WMD attacks, and that the entire Department must be prepared to respond effectively to a WMD attack (or any other emergency event) should one occur.

The Department believes that the fundamental conclusion of the report is sound: the Department of Justice should do more in order to formally and centrally coordinate emergency response activities of all appropriate Department components. The overall recommendations of the report strike us as helpful and informative. ***We concur in all five recommendations, and will implement all of the recommendations in the manner described below.***

We also note, however, the substantial improvements made during the past year in the capacity of the Department and its law enforcement components to implement Emergency Support Function # 13 of the National Response Framework. Progress in this regard has been measurable and will continue as the Department's ESF-13 duties receive increased funding in the future. Additionally, as the report notes, the ESF-13 function is designed to work relative to all

hazards (*i.e.*, natural disasters or terrorist events). The Bureau of Alcohol, Tobacco, Firearms and Explosives has tested its ESF-13 protocols on three occasions since 2006, and each occasion was successful.

The Department will respond quickly to the OIG's recommendations with a series of actions that will create a clearer and more formal system to ensure that all Justice Department emergency response functions, continuity of operations programs, and continuity of government programs are up to date, aligned with national policies, and well-coordinated within the Department. Specifically, the Department intends to accomplish the following tasks in the coming weeks:

1. The Acting Deputy Attorney General will issue a memorandum to all components identifying an individual in the Office of the Deputy Attorney General (ODAG) responsible for overseeing emergency response activities of the Department. This individual will serve as a single point of contact within the leadership offices of the Department for all emergency response activities, will ensure that the Department's emergency response program is up to date, and will ensure that Department training activities relative to emergency response functions are thorough and widely available to relevant Department components.

2. The Department will create a new committee of relevant Department components that will ensure that the Department's leadership offices receive timely and thorough advice and recommendations about emergency response preparedness issues.

3. The committee noted above will be tasked to review Department policies and directives related to emergency response functions, continuity of operations and continuity of government programs to ensure that they are effective and up to date. This review will stretch beyond WMD matters (since the Department must be prepared to address a wide variety of potential emergencies) but WMD issues will be accounted for in the review. ODAG will ensure that the Department's WMD emergency response capabilities are consistent with the Department's other emergency response capabilities.

We believe that these actions will result in a stronger and durable system of effective management and oversight controls for emergency response activities.

Sincerely,

James A. Baker
Associate Deputy Attorney General

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## APPENDIX V: OIG ANALYSIS OF THE OFFICE OF THE DEPUTY ATTORNEY GENERAL RESPONSE

The Office of the Inspector General provided a draft of this report to the Office of the Deputy Attorney General for its comment. The ODAG's response is included in Appendix IV to this report. The OIG's analysis of the ODAG's response and the actions necessary to close the recommendations are discussed below.

**General Comment**

**Summary of ODAG Comment**. The ODAG response stated that there have been substantial improvements made during the past year in the capacity of the Department and its law enforcement components to implement Emergency Support Function-13 (ESF-13) of the National Response Framework. According to the ODAG, progress in this regard has been measurable and will continue as the Department's ESF-13 duties receive increased funding in the future. The ODAG also stated that the ESF-13 function is designed to work relative to all hazards (that is, natural disasters or terrorist events). Further, the ODAG response stated that the Bureau of Alcohol, Tobacco, Firearms and Explosives has tested its ESF-13 protocols on three occasions since 2006, and each occasion was successful.

**OIG Analysis.** Our report describes many of the actions taken by the Department and ATF related to ESF-13. However, while we acknowledge these activities, it is important to note that none specifically involved a WMD incident. For example, according to ATF, since 2006 it has participated in at least 10 incidents where ESF-13 played a crucial role in coordinating a federal law enforcement response when state and local law enforcement agencies were overwhelmed. However, these incidents included six hurricanes, one tropical storm, one wildfire, and two floods. None involved responding to a WMD incident.

**Recommendation 1. Designate a person or office at the Department level with the authority to manage the Department's WMD operational response program.**

**Status.** Resolved – open.

**Summary of the ODAG Response.** The ODAG concurred with this recommendation and stated that the Acting Deputy Attorney General will issue a memorandum to all components identifying an individual in

the ODAG responsible for overseeing the emergency response activities of the Department. This individual will serve as a single point of contact within the leadership offices of the Department for all emergency response activities, will ensure that the Department's emergency response program is up to date, and will ensure that Department training activities related to emergency response functions are thorough and widely available to relevant Department components.

**OIG Analysis.** The actions planned by the ODAG are responsive to our recommendation. Please provide the OIG with a copy of the memorandum identifying the individual in the ODAG responsible for overseeing the emergency response activities of the Department.

**Recommendation 2. Update the Department's response policies and plan to conform them to the National Response Framework and the National Incident Management System.**

**Status.** Resolved – open.

**Summary of the ODAG Response.** The ODAG concurred with this recommendation and stated that the Department will respond quickly to the OIG's recommendations with a series of actions that will create a clearer and more formal system to ensure that all Department emergency response functions, continuity of operations programs, and continuity of government programs are up to date, aligned with national policies, and well coordinated within the Department.

Further, the Department will create a new committee of relevant Department components that will ensure that the Department's leadership offices receive timely and thorough advice and recommendations about emergency response preparedness issues. The committee will be tasked to review Department policies and directives related to emergency response functions, continuity of operations and continuity of government programs to ensure that they are effective and up to date. The ODAG stated further that this review will stretch beyond WMD matters (since the Department must be prepared to address a wide variety of potential emergencies), but WMD issues will be accounted for in the review. The ODAG will ensure that the Department's WMD emergency response capabilities are consistent with the Department's other emergency response capabilities.

**OIG Analysis.** The actions planned by the ODAG are responsive to our recommendation. Please provide the OIG a copy of the Department's new policies, directives, and a WMD plan that are in conformance with

national policies and a list of the members of the committee of relevant Department components who will be responsible for emergency response preparedness issues.

**Recommendation 3. Require Department components to update their own policies and plans to reflect the updated Department guidance, and to reflect the need for adequate coordination among Department components in responding to WMD incident.**

**Status.** Unresolved – open.

**Summary of the ODAG Response.** The ODAG concurred with this recommendation. The ODAG stated in its response that the Federal Bureau of Investigation is not the only Department entity responsible for addressing WMD attacks and that the entire Department must be prepared to respond effectively to a WMD attack (or any other emergency event) should one occur.

**OIG Analysis.** The ODAG's response is partially responsive to our recommendation. The ODAG did not state that it will require Department components to update their own policies and plans to reflect the updated Department guidance, or to reflect the need for adequate coordination among Department components in responding to a WMD incident. Please provide the OIG a description of the actions Department components will take to revise their policies and plans to reflect the updated Department guidance and to reflect the need for adequate coordination among the components in responding to a WMD incident.

**Recommendation 4. Establish effective oversight to ensure that components maintain WMD response plans, participate in training and exercises, and implement a corrective action program in response to such exercises.**

**Status.** Unresolved – open.

**Summary of the ODAG Response.** The ODAG concurred with this recommendation and stated in its response that the Department should do more to formally and centrally coordinate emergency response activities of all appropriate Department components. The ODAG stated that the individual assigned responsibility for overseeing emergency response activities will ensure that Department training activities related to emergency response functions are thorough and widely available to relevant Department components.

**OIG Analysis.** The actions planned by the ODAG are partially responsive to our recommendation. The response does not address the maintenance of WMD response plans, participation in exercises, or the implementation of a corrective action program in response to such exercises. Please provide the OIG with the actions planned to ensure that the components maintain WMD response plans, participate in training and exercises, and implement a corrective action program in response to such exercises.

**Recommendation 5. Ensure that the Department is prepared to fulfill its emergency support function responsibilities under the National Response Framework, including reviewing the designation of ATF as the Department's lead agency to coordinate public safety and security activities, approving a Concept of Operations Plan, and staffing national and regional coordinator positions.**

**Status.** Unresolved – open.

**Summary of the ODAG Response.** The ODAG concurred with this recommendation and noted in its response that there have been substantial improvements made during the past year in the capacity of the Department and its law enforcement components to implement Emergency Support Function 13 of the National Response Framework. The ODAG stated that progress in this regard has been measurable and will continue as the Department's ESF-13 duties receive increased funding in the future. The ODAG stated that the Bureau of Alcohol, Tobacco, Firearms and Explosives has tested its ESF-13 protocols on three occasions since 2006 and each occasion was successful.

**OIG Analysis.** The ODAG's response is partially responsive to our recommendation. While the ODAG in its response stated that ATF has tested its ESF-13 protocols on three occasions since 2006, and each occasion was successful, none of these tests involved a response to a WMD incident. The response also did not specifically indicate how the Department will ensure that it is prepared to fulfill its emergency support function responsibilities under the National Response Framework. Further, the response did not address whether the Department plans to:

- review the designation of ATF as the Department's lead agency to coordinate public safety and security activities,
- approve a Concept of Operations Plan, or
- staff the national and regional coordinator positions.

Please provide the OIG with information on how the Department plans to ensure that it is prepared to fulfill its emergency support function responsibilities under the National Response Framework, including whether it plans to review ATF's designation as the Department's lead agency for ESF-13 matters, its plans for finalizing and approving a Concept of Operations Plan, and its plans for staffing all the national and regional coordinator positions.

Please provide the OIG with the information described above in each recommendation, or the status of the planned actions, by July 30, 2010.

## APPENDIX VI: THE DRUG ENFORCEMENT ADMINISTRATION RESPONSE TO DRAFT REPORT

**U. S. Department of Justice**
Drug Enforcement Administration

*www.dea.gov*

Washington, D.C. 20537

MAY 19 2010

MEMORANDUM

TO: Michael D. Gulledge
Assistant Inspector General
for Evaluation and Inspections Division
Office of the Inspector General

FROM: Kevin M. Foley
Acting Deputy Chief Inspector
Office of Inspections

SUBJECT: DEA's Response to the OIG Draft Report: *Review of the Department's Preparation to Respond to a Weapon of Mass Destruction Incident*

The Drug Enforcement Administration (DEA) has reviewed the Department of Justice (DOJ) Office of the Inspector General's (OIG) Draft Report titled, *Review of the Department's Preparation to Respond to a Weapon of Mass Destruction Incident, A-2009-006.* Although the recommendations in this report are directed to DOJ, DEA provides the following formal response to address a portion of the report that DEA considers inaccurate.

***No component other that the FBI regularly conducts or participates in WMD response exercises, page 31.***

**DEA Response:** DEA participated in several National Level WMD exercises. On June 22 and 23, 2005, DEA engaged and deployed 69 personnel in National Level Exercise "Pinnacle" (Outbreak of Avian Influenza and terrorist threats of a WMD attack). In conjunction with the exercise scenario, the DEA Deputy Administrator convened with DEA leadership and conducted briefings regarding an agency emergency response to the tabletop exercise. Pursuant to the exercise scenario, DEA Leadership, to include the Deputy Administrator and the Administrator, deployed to emergency alternate locations to further engage in the exercise scenario.

On June 21, 2006, DEA engaged and deployed 64 personnel in National Level Exercise "Forward Challenge". DEA Leadership, to include the Deputy Administrator, participated in this exercise.

DEA also engaged in National Level Exercises in 2007 and 2008 to the extent personnel were deployed to emergency relocation sites. All exercises have included participation with DOJ and the Department of Homeland Security.

This information was provided to OIG to update the draft report; however, it was not included to reflect that DEA also participates in WMD response exercises. Exercise participation logs were also offered to OIG for verification.

DEA appreciates the opportunity to provide the additional comments to the draft report to accurately reflect participation in WMD response exercises.

cc: Michele M. Leonhart
Acting Administrator

Richard Theis
Director
Audit Liaison Group

Mark Michalic
Special Assistant
Office of the Deputy Attorney General

## APPENDIX VII: OIG ANALYSIS OF THE DRUG ENFORCEMENT ADMINISTRATION RESPONSE

The Office of the Inspector General provided a copy of this draft report to the Office of the Deputy Attorney General for comment. A copy of the report was also provided to the Drug Enforcement Administration. The DEA provided general comments on one area of the report. The DEA did not respond to the recommendations because they were directed to the Office of the Deputy Attorney General. The DEA's response is included in Appendix VI of this report. The OIG's analyses of the DEA's general comments are discussed below.

**Summary of the DEA Response.** In response to the OIG's conclusion that no Department component other than the FBI regularly conducts or participates in WMD response exercises, the DEA stated that it participated in several National Level Exercises to respond to a WMD incident. Specifically, DEA stated that on June 22 and 23, 2005, it engaged in the National Level Exercise "Pinnacle," which was an exercise to respond to an outbreak of avian influenza and terrorist threats of a WMD attack. During the exercise, DEA leadership conducted briefings regarding an agency emergency response to the exercise and deployed to emergency alternate locations to further engage in the exercise scenario. In addition, on June 21, 2006, DEA leaders participated in the National Level Exercise "Forward Challenge that involved a WMD scenario." Also, the DEA deployed personnel to emergency relocation sites as part of National Level Exercises in 2007 and 2008 that dealt with WMD scenarios. The DEA stated that it had provided this information to the OIG to update the draft report, but the information was not included.

**OIG Analysis.** The OIG did not include this information in the report because the DEA's participation in these National Level Exercises was limited to exercising elements of its Continuity of Operations Plan (COOP). In fact, National Level Exercises "Pinnacle" and "Forward Challenge" were designed by the Department of Homeland Security specifically to test COOP preparedness, not the operational response to a WMD incident, which was the subject covered by our report. Similarly, the DEA's deployment of personnel to relocation sites as part of National Level Exercises in 2007 and 2008 was related to testing its COOP preparedness. As we informed the DEA, and made clear in our report, COOP preparedness, including the participation in COOP-related exercises, is not the subject of this report.

In addition, we note that during our interviews with DEA emergency management officials, they had stated that the DEA did not participate in the emergency response operations portion of the National Level Exercises and that the DEA had not participated in any exercise that included an on-site simulation of a WMD incident. Furthermore, the DEA was not listed as a participant in the National Level Exercises of 2005 (TOPOFF 3) or of 2007 (TOPOFF 4), which were the National Level Exercises that involved responding to a WMD incident.