

CRS Report for Congress

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Emergency Management Preparedness Standards: Overview and Options for Congress

Updated February 4, 2005

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Summary

The report issued by the National Commission on Terrorist Attacks Upon the United States (also referred to as the “9/11 Commission”) identifies emergency response gaps evident after the attacks of September 11, 2001. While heroic actions that day saved thousands of people, many lives were lost, in part because standard procedures were not in place, or were not followed, and standardized technologies were not used by participating agencies. To correct these deficiencies, the 9/11 Commission report includes recommendations that emergency response standards be adopted nationwide.

The report includes three recommendations that focus on emergency response standards: (1) the adoption and use of emergency response standards for incident command; (2) mutual aid provisions concerning liability and indemnification of responders; and (3) private sector preparedness. Through enactment of the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) Congress addressed these recommendations. In addition, the Department of Homeland Security has taken action to establish standards to improve emergency response capabilities.

General agreement appears to exist on the intent of the 9/11 Commission’s recommendations in this policy area — improvement of the nation’s emergency response capabilities. During the 109th Congress the policy debate might be extended to include discussion of the implications and consequences of adopting the 9/11 Commission’s recommendations and implementing federal standards. Questions that might be raised include the following: Would federally imposed or endorsed standards diminish the authority and ability of the states, and their local governments, to establish operational procedures that best fit the needs of their communities? Would the imposition of standards through legislation raise unfunded mandate concerns? What effect might the adoption of such standards have upon the intergovernmental partnership in homeland security and emergency management response efforts? This report presents background information on the commission’s findings, on emergency response standards, and on options Congress might consider to address issues related to emergency preparedness standards. This report will be updated as legislative developments and administrative actions warrant.

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Emergency Management Preparedness Standards: Overview and Options for Congress

9/11 Commission Findings and Recommendations

The majority of the recommendations issued by the National Commission on Terrorist Attacks Upon the United States (“the 9/11 Commission” or “the commission”) focus on the need to reform the intelligence community of the United States.¹ Based upon two days of public hearings and subsequent evaluation by commission staff on the responses at the sites of the attacks in New York City and Virginia, the report recommended improvements in emergency response procedures and capabilities through the adoption and use of standard modes of organization and planning.²

The 9/11 Commission concluded that the responses of civilians, public safety officers, and administrators were heroic and sustained throughout those horrific events. The commission also concluded that lapses and procedural deficiencies added to the tragic events of that day. As summarized by the commission, confusion and tragedy resulted not only from the immense scale of the attacks (particularly in New York City), but also from inadequate planning, lack of coordination, and inadequate technology. Of concern to the commission, these deficiencies considered systemic, were presumed to exist elsewhere in the nation, and accordingly require attention at the federal level. Summary findings reported by the commission that bear on these findings include the following:

It is a fair inference, given the differing situations in New York City and Northern Virginia, that the problems in command, control, and communications that occurred at both sites will likely recur in any emergency of similar scale. The task looking forward is to enable first responders to respond in a coordinated manner with the greatest possible awareness of the situation.³

If New York and other major cities are to be prepared for future terrorist attacks, different first responder agencies within each city must be fully coordinated, just as different branches of the U.S. military are. Coordination entails a unified

¹ U.S. National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report* (Washington: GPO, 2004). The report is available online at [<http://www.9-11commission.gov/>], visited Feb. 4, 2005.

² On May 18 and 19, 2004, commission members received testimony from witnesses familiar with the details of, or were active in the responses to, the sites of the attacks. See [<http://www.9-11commission.gov/hearings/hearing11.htm>], visited Feb. 4, 2005.

³ *Ibid*, p. 315.

command that comprehensively deploys all dispatched police, fire, and other first responder resources.⁴

The attacks on 9/11 demonstrated that even the most robust emergency response capabilities can be overwhelmed if an attack is large enough. Teamwork, collaboration, and cooperation at an incident site are critical to a successful response Preparedness in the private sector and public sector for rescue, restart, and recovery of operations should include (1) a plan for evacuation, (2) adequate communications capabilities, and (3) a plan for continuity of operations [T]he lack of a widely embraced private-sector preparedness standard was a principal contributing factor to this lack of preparedness.⁵

On the basis of these and other findings, the commission issued recommendations to improve the emergency response capabilities of the federal and state and local governments, as well as individuals and the private sector.⁶ The text of these recommendations is presented in **Table 1**, below.

⁴ Ibid, p. 321-322.

⁵ Ibid, p. 397-398.

⁶ Other recommendations pertaining to improving emergency response capabilities address the issues of communications connectivity and federal funding for state and local governments. These issues are explored in Congressional Research Service reports available at [<http://www.congress.gov/erp/legissues/html/isdhs6.html>], visited Feb. 4, 2005.

**Table 1. Emergency Management Preparedness
Recommendations on Standards and
Related Congressional Action, 9/11 Commission**

Text of recommendation	Summary statements of congressional options
<p>“Emergency response agencies nationwide should adopt the Incident Command System (ICS). When multiple agencies or multiple jurisdictions are involved, they should adopt a unified command. Both are proven frameworks for emergency response. We strongly support the decision that federal homeland security funding will be contingent, as of October 1, 2004, upon the adoption and regular use of ICS and unified command procedures. In the future, the Department of Homeland Security should consider making funding contingent on aggressive and realistic training in accordance with ICS and unified command procedures.”</p>	<p>(A) Condition federal homeland security funding upon accreditation of units of governments; (B) urge or require DHS to evaluate the capability of units of government in terms of ICS attainment; (C) require that funds be conditioned based on criteria or indicators of need; (D) monitor use of ICS through new planning mechanisms in process in DHS; (E) mandate that DHS assess conditions under which ICS is best used; or, (F) take no action and allow administrators to decide.</p>
<p>“Congress should pass legislation to remedy the long-standing indemnification and liability impediments to the provision of public safety mutual aid in the National Capital Region and where applicable throughout the nation.”^A</p>	<p>(A) Enact the recommended legislation; (B) assess the necessary scope of such legislation; (C) evaluate the impact of federal legislation on the Emergency Management Assistance Compact (EMAC); or (D) evaluate the deficiencies of EMAC or other mutual aid agreements.</p>

Text of recommendation	Summary statements of congressional options
<p>“We endorse the American National Standards Institute’s recommended standard for private preparedness. We were encouraged by Secretary Tom Ridge’s praise of the standard, and urge the Department of Homeland Security to promote its adoption. We also encourage the insurance and credit-rating industries to look closely at a company’s compliance with the ANSI standard in assessing its insurability and creditworthiness. We believe that compliance with the standard should define the standard of care owed by a company to its employees and the public for legal purposes. Private-sector preparedness is not a luxury; it is a cost of doing business in the post-9/11 world. It is ignored at a tremendous potential cost in lives, money, and national security.”</p>	<p>(A) Enact legislation requiring that companies receiving federal contracts adopt the standards through the Federal Acquisition Regulation (FAR); (B) authorize funds to extend the existing accreditation processes to private companies; (C) approve incentives for companies to adopt the ANSI preparedness standards; or, (D) take no action unless a mandate imposing the standard on the private sector is funded.</p>

Source: *The 9/11 Commission Report*, pp. 397-398.

^A The second recommendation (concerning mutual aid agreements) is not highlighted as a recommendation, but is included in the discussion of findings on page 397 of the report. It is included here as a recommendation for Congress as the phrase “Congress should pass legislation ...” serves as such.

Summary of Issues

The recommendations of the 9/11 Commission in Table 1 share a common attribute — the assumption that the adoption of standard procedures and guidelines will improve the capabilities of individuals, businesses, and public agencies to respond to catastrophes and enhance the safety of individuals and communities after a disaster occurs. Some may view the recommendations to be the tip of an iceberg that indicates the need for congressional action on a wide range of matters. Many other emergency response issues became apparent on September 11th and could be the subject of congressional examination and action.

This report provides background information on the emergency preparedness and response topics raised in the commission’s report. It also explores other options that Congress may choose to consider with regard to those recommendations. Summary information on the issues that underlie the recommendations follows.

Adoption of the Incident Command System.

- “*Emergency response agencies throughout the nation should adopt the Incident Command System (ICS).*” The ICS has been applied for decades to minimize operational difficulties as multiple agencies respond to disaster sites. The Department of Homeland Security (DHS) incorporated the ICS in the National Incident Management System (NIMS). State and local governments must adopt NIMS and ICS protocol in order to receive federal preparedness financial assistance in FY2006.⁷ Terrorist attacks pose a particular danger to responders, as secondary explosions, small arms fire, or chemical weapons may be used specifically to kill officials or impair rescue efforts. One issue is whether past principles that have guided ICS operations might endanger the lives or welfare of first responders and recovery specialists, and whether ICS has limitations for certain types of public agencies limited by size, finances, or geographic characteristics. An attendant concern is the degree to which unified command structures would accommodate, or might fail to accommodate, the range of needs and capabilities of responding agencies. For example, if a terrorist attack suddenly shifts the need for resources, local agencies and concerned citizens might be concerned that they would lack sufficient authority to set priorities and respond as needed under a unified command structure.

Mutual Aid.

- “*Congress should pass legislation to remedy indemnification and liability impediments to mutual aid in the National Capital Region and other areas.*” The 108th Congress enacted legislation pertinent to this recommendation in the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458).⁸ In addition, almost all of the states (including Virginia, Maryland, and the District of Columbia) have incorporated provisions of the Emergency Management Assistance Compact (EMAC) into their statutory codes. EMAC establishes a framework under which standard procedures and operational policies are agreed upon by the states to facilitate the provision of mutual aid when emergencies occur, including a provision which ensures that when officers or employees of one state render aid in another in emergency situations, they are treated as agents of the requesting state for tort and immunity purposes. [EMAC does not address indemnification.] In addition, many states have adopted mutual aid compacts that address liability

⁷ See the NIMS text at U.S. Department of Homeland Security, “National Incident Management System,” [<http://www.dhs.gov/interweb/assetlibrary/NIMS-90-web.pdf>], visited Feb. 4, 2005.

⁸ For more information see page 19 of this report.

concerns.⁹ Given the liability protection that EMAC provides to signatory states, including those in the National Capital Region, if Congress considers such legislation, it might examine its impact on EMAC-based agreements among the states, and whether increased federal action in this area is warranted.

ANSI Emergency Preparedness Standards.

- *“The Department of Homeland Security (DHS) should promote adoption of ANSI standards for emergency preparedness by the private sector.”* Like other ANSI standards, the emergency preparedness standards recommended for adoption are voluntary; that is, they are not mandated to be adopted. The commission report urges DHS to take action to promote the adoption of these standards by the private sector. The appropriate federal role for Congress or DHS in encouraging the private sector to adopt such standards is an issue.

Other Options Related to Emergency Response Standards. In addition to the recommendations of the 9/11 commission, Congress might consider taking action on the following issues.

- *Review of existing federal authorities for emergency response.* Federal statutes provide authority for executive branch actions in the event of emergencies. Congress might evaluate whether the authorities should be revised.
- *Emergency responder and civilian health.* Civilians and first responders in New York City reportedly have experienced severe health problems since September 11, 2001.¹⁰ Congress might consider options related to monitoring the health of such responders.

⁹ State emergency management mutual aid agreements that have been enacted into law by the states, as well as liability protection provisions for those rendering emergency aid, have been identified for the states. For a summary see the “Mutual Aid” and “Other” categories of information in: CRS Report RL32287, *Emergency Management and Homeland Security Statutory Authorities in the States, District of Columbia, and Insular Areas: A Summary*, by Keith Bea, L. Cheryl Runyon, and Kae M. Warnock. For summaries of and citations to the mutual aid agreements and liability provisions enacted by each state see the individual profile reports cited in Table 1 of RL32287.

¹⁰ The Centers for Disease Control and the National Institute for Occupational Safety and Health of the Department of Health and Human Services are conducting a baseline screening study to establish a database of health problems encountered by individuals who worked at the site of the World Trade Center collapse in the aftermath of the attack. See [<http://grants.nih.gov/grants/guide/rfa-files/RFA-OH-04-004.html>], visited Feb. 4, 2005.

Overview of Existing Standards

Public safety organizations, analysts, and professional associations have collaborated for years to develop emergency response standards to improve the efficiency of response agencies, eliminate obstacles that might impede or prevent the delivery of assistance after a disaster, and satisfy public and fiduciary agent concerns. This section of the report introduces, and provides references to, standards and related processes directly relevant to the two commission recommendations presented in Table 1, above.

Organizations that Establish Standards. Two non-federal organizations have developed or endorsed emergency preparedness standards. The activities of both entities are described first. In addition, at least one federal authority, the Occupational Safety and Health Administration (OSHA), has established standards for emergency response actions. A summary of these organizations' activities follows.

American National Standards Institute. The American National Standards Institute (ANSI) is a private, non-profit organization "that administers and coordinates the U.S. voluntary standardization and conformity assessment system."¹¹ A "Homeland Security Standards Panel" (ANSI-HSSP) has been established to facilitate the development of standards related to homeland security needs. The task before the panel has been summarized as follows.

Established by ANSI in February 2003, the ANSI-HSSP has as its scope to catalog, promote, accelerate and coordinate the timely development of consensus standards within the national and international voluntary standards systems intended to meet identified homeland security needs, and communicate the existence of such standards appropriately to governmental units and the private sector. The Panel will initially focus its activities on responding to the most immediate standards needs of DHS.¹²

According to information distributed by ANSI in a letter dated January 23, 2004, the 9/11 Commission asked ANSI to "develop a consensus on a 'National Standard for Preparedness' for the private sector."¹³ In workshops held in the early months of 2004, ANSI-HSSP served as the forum for discussions among private and public sector representatives on the improvement of private sector emergency preparedness

¹¹ For information see [http://www.ansi.org/about_ansi/overview/overview.aspx?menuid=1], visited Feb. 4, 2005.

¹² For information on the panel, including meeting schedules and areas of interest, see [http://www.ansi.org/standards_activities/standards_boards_panels/hssp/overview.aspx?menuid=3#overview], visited Feb. 4, 2005.

¹³ This information based on a telephone conversation with Matthew Deane, Secretary for ANSI-HSSP, and the text of the document titled "Recommendation to the National Commission on Terrorist Attacks Upon the United States," transmitted to CRS. For information on the standard and the process used in establishing the standard, see [http://www.ansi.org/news_publications/news_story.aspx?menuid=7&articleid=729], visited Feb. 4, 2005.

and business continuity plans. Participants “concluded that a high-level, voluntary standard applicable to all businesses regardless of industry, size, or location, [was] needed to establish a common framework for emergency preparedness.”¹⁴

Discussions in the workshop focused on the 2004 edition of the Disaster/Emergency Management and Business Continuity Programs standard acted upon by the National Fire Protection Association (NFPA) in late 2003 and made effective February 5, 2004.¹⁵ ANSI subsequently proposed to the 9/11 Commission that NFPA 1600 “be accepted as the common framework for private-sector national preparedness;” the 9/11 Commission endorsed the proposal. ANSI-HSSP also developed recommendations for enhancements to NFPA 1600 that have been submitted to its technical committee for consideration and has recommended that a “national implementation strategy” be developed that involves the Department of Homeland Security (DHS) and other agencies to support use of the standard.

In addition to the effort conducted thus far by ANSI-HSSP for the 9/11 Commission, ANSI has received a contract from DHS to conduct a large scale effort to build a database of standards for “products, processes, systems, services and training programs that relate to homeland security.”¹⁶

National Fire Protection Association. The National Fire Protection Association (NFPA) is a voluntary professional association that, for over 100 years, has developed standards related to fire prevention and firefighting.¹⁷ The NFPA 1600 standard recommended by ANSI that is the subject of the 9/11 Commission’s endorsement is based upon work that has been conducted for over a decade. The NFPA Technical Committee on Disaster Management developed NFPA 1600, *Standard on Disaster/Emergency Management and Business Continuity Programs* on the basis of work completed on the antecedent document, *Recommended Practice for Disaster Management*, initially produced in 1995. The 2000 edition of NFPA 1600 expanded the “recommended practice” to a standard by incorporating provisions related to emergency management and business continuity programs to ease the consequences of a disaster. The 2004 edition retains the basic features of the 2000 standard.¹⁸

¹⁴ Ibid.

¹⁵ For background on the development of NFPA 1600, see National Fire Protection Association, *NFPA 1600 Standard on Disaster/Emergency Management and Business Continuity Programs 2004 Edition*, available at [<http://www.nfpa.org/PDF/nfpa1600.pdf?src=nfpa>], p.1600-1, visited Feb. 4, 2005.

¹⁶ For more information on the standards database project, see [http://www.ansi.org/news_publications/news_story.aspx?menuid=7&articleid=718], visited Feb. 4, 2005.

¹⁷ For background and information on NFPA, see the organization’s website available online at [<http://www.nfpa.org/index.asp?cookie%5Ftest=1>], visited Feb. 4, 2005.

¹⁸ Information taken from “Origin and Development of NFPA 1600” in *NFPA 1600 Standard on Disaster/Emergency management and Business Continuity Programs 2004 Edition*, p. 1600-1.

NFPA 1600 sets out criteria that enable administrators to evaluate existing programs to improve disaster and emergency management and business continuity programs. The standard includes five sub-categories — administration, a reserved section, definitions, program management, and program elements. **Table 2** of this report presents summary information on the components of standards within these sub-categories. The complete text of the standard should be referred to for further information.

Table 2. Components of NFPA 1600 Standards and Selected Explanatory Material

Component or element	Explanatory descriptions
1. Administration 1.1 — Scope of the standard establishes common criteria for disaster/emergency programs.	1.1 — Private and public entities have unique needs and capabilities; programs designed accordingly.
2. Reserved for Referenced Publications	not applicable
3. Definitions See NFPA for details.	See NFPA for details.
4. Program management: 4.1 — Documentation of goals, objectives, plans, procedures. 4.2 — Identification of program coordinator with authority. 4.3 — Establishment of advisory committee. 4.4 — Establishment of performance objectives for program evaluation.	4.1 — Policy should include mission statement, enabling authority. 4.2 — Position description for coordinator should be written. 4.3 — Characteristics and authority of advisory committee members are identified. 4.4 — Evaluation based on program management components and program elements and periodic review of objectives.

Component or element	Explanatory descriptions
<p>5. Program elements:</p> <p>5.1 — Program should address all phases of disaster management.</p> <p>5.2 — Compliance with legal authorities.</p> <p>5.3 — Identification of hazards and vulnerabilities.</p> <p>5.4 — Development of hazard mitigation strategy.</p> <p>5.5 — Identification of means to allocate resources.</p> <p>5.6 — Composition of mutual aid agreements.</p> <p>5.7 — Development of plans and identification of elements.</p> <p>5.8 — Development of means to control response and recovery operations.</p> <p>5.9 — Establishment of warning procedures.</p> <p>5.10 — Development and implementation of operational procedures.</p> <p>5.11 — Identification of logistical resources and facilities to support response efforts.</p> <p>5.12 — Assessment of training needs and development of curriculum.</p> <p>5.13 — Evaluation of procedures and exercises.</p> <p>5.14 — Development of procedures to provide information.</p> <p>5.15 — Development of finance and administration procedures.</p>	<p>5.1 — Management phases include mitigation, preparedness, response, and recovery.</p> <p>5.2 — Include periodic review of authorities and suggested revisions.</p> <p>5.3 — Use suggested means for identifying hazards and conducting risk assessments.</p> <p>5.4 — Components of such strategies are identified.</p> <p>5.5 — The categories of resources are identified, along with organizations.</p> <p>5.6 — Identifies the types of such agreements and some characteristics and components.</p> <p>5.7 — Attributes of plans and the processes to be followed are identified.</p> <p>5.8 — Incident management system that includes procedures to facilitate control of disaster area should be developed.</p> <p>5.9 — Protocols should be tested and include interoperability testing.</p> <p>5.10 — Procedures are to be established to minimize property damage, assess damages, and provide for continuity of operations.</p> <p>5.11 — The capabilities of facilities and associated resources should meet expected needs.</p> <p>5.12 — Training and curriculum should comply with applicable regulations and records maintained.</p> <p>5.13 — Corrective actions should be taken to address deficiencies.</p> <p>5.14 — Public information capabilities should identify communication modes.</p> <p>5.15 — Framework should allow for flexibility and means of expediting requests.</p>

The entire NFPA 1600 document comprises 40 pages. However, a relatively small portion of NFPA 1600 identifies standards; most of the document contains references to organizations and related information sources, including other NFPA standards for specific activities.¹⁹

¹⁹ For brief statements of required program components see *Ibid*, pp. 1600-4 through 1600-7. Explanatory information on some, but not all components is presented in Annex A, pp. 1600-7 through 1600-12. The remainder of the document comprises lists of organizations (pp. 1600-12 through 1600-25 and pp. 1600-26 through 1600-36) and references to supporting documents (pp. 1600-25, 26 and pp. 1600-36 through 1600-38).

Occupational Safety and Health Administration (OSHA).²⁰ The Hazardous Waste Operations and Emergency Response standard (HAZWOPER) is a federal regulation issued by the Occupational Safety and Health Administration (OSHA) that specifies standards for employees responding to a hazardous materials incident, including public safety personnel.²¹ Congress directed OSHA to develop the regulation in 1986, after finding OSHA's actions on hazardous material response to a 1980 authorization deficient.²²

The HAZWOPER regulation took effect in March 1990 and addresses several elements of hazardous materials response. It identifies the types of organizations and operational activities that must comply with the standards, precautionary actions to be taken when hazardous materials are removed from a site, training requirements, elements of an emergency response plan (lines of authority, site security, and evacuation), and medical evaluations of responders, among other matters. Appendices to the regulation provide specifications on test methods for personal equipment, types and levels of protective gear, compliance and training curriculum guidelines, and reference sources. The regulation specifies the levels of knowledge, skills, and abilities that emergency responders must possess at specified competency levels.

A number of HAZWOPER provisions were based on NFPA standards for hazardous materials response. The HAZWOPER standard has served as the basis of some federal agencies' response practices, including those of the Environmental Protection Agency and the U.S. Coast Guard.

Use of Standards in Accreditation Processes. Two systems are in use to assess the capabilities of agencies and the quality of emergency preparedness programs. The Emergency Management Accreditation Program (EMAP) consists of a tool that may be used to evaluate emergency management programs. The National Emergency Management Baseline Capability Assurance Program (NEMB-CAP), administered by the Federal Emergency Management Agency (FEMA) within the Department of Homeland Security, is used to assess the emergency response capabilities of state and local governments and tribal organizations.

²⁰ Summary of HAZWOPER standard primarily derived from: CRS Report RL31680, *Homeland Security: Standards for State and Local Preparedness*, by Ben Canada.

²¹ 29 CFR 1910.120. Implementation guides have been developed pursuant to the HAZWOPER regulations. See, for example: David M. Einolf, *HAZWOPER Incident Command; A Manual for Emergency Responders* (Rockville, MD: Government Institutes, 1998) and *Incident Command* (Alsip, IL: North Central Environmental and Industrial Safety Training Center, 1995).

²² The 1986 directive is found in Title I of the Superfund Amendments and Reauthorization Act of 1986 (SARA, P.L. 99-499), 42 U.S.C. 9601-9675. The 1980 authorization is found in Title I of the Comprehensive Environmental Response Compensation Liability and Recovery Act of 1980 (P.L. 96-510).

Emergency Management Accreditation Program. The Emergency Management Accreditation Program (EMAP) is an incorporated, nonprofit organization administered through the Council of State Governments and jointly sponsored by national organizations concerned with the improvement of state and local emergency management capabilities.²³ The EMAP process enables state and local emergency management agencies to conduct evaluations of their emergency response capabilities. As summarized by EMAP administrators:

By offering consistent standards and a process through which emergency management programs can demonstrate compliance, EMAP will strengthen communities' capabilities in responding to all types of hazards, from tornadoes and earthquakes to school violence and bioterrorism. Accreditation is voluntary and is not tied to any type of funding. Its intent is to encourage examination of strengths and weaknesses, pursuit of corrective measures, and communication and planning among different sectors of government and the community.²⁴

The standards used in the EMAP process are derived from NFPA 1600 and "are essentially the same as those listed in NFPA 1600 — training based upon an assessment of need, focus on building awareness and skills, identification of frequency and scope of training, incident management training, and record keeping."²⁵ As part of the process, evaluators examine the components of a jurisdiction's emergency management program against the EMAP standard. As an example of the type of information sought in EMAP evaluations, crisis communications and public information components should include procedures for communication with the public before and after a disaster, the support of joint information centers, and protocols for communicating with the media, legislators, and others.²⁶ Broad areas covered by EMAP include program structure, legal authorities, risk assessment capabilities, hazard mitigation strategies, resource management, planning, logistics, communications, finance, and training. As of September 2004, three jurisdictions (Arizona, Florida, and the District of Columbia) had attained EMAP accreditation. In addition to states, units of local government are involved in the accreditation process.

²³ Organizations involved in the EMAP process include the National Emergency Management Association (NEMA, comprised of state officials), the International Association of Emergency Managers (IAEM, comprised of local officials), the Federal Emergency Management Agency (FEMA), and others. Staff support for EMAP is provided by NEMA and funded primarily from FEMA. For details on EMAP, see [http://www.emaponline.org/What/Background/Description_Full.cfm], visited Feb. 4, 2005.

²⁴ *Ibid.*

²⁵ Email of July 23, 2004, with William Waugh, Department of Public Administration and Urban Studies, Georgia State University, 2004 member of the EMAP commission.

²⁶ See the deconstructed standards for component 3-13.1, "Crisis Communication, Public Education, and Information," presented in an Excel spreadsheet program at [http://www.emaponline.org/EMAP/Registered/Awareness/EMAP%20Devolve_Revised_1003.xls], visited Feb. 4, 2005.

National Capability Assurance. The Federal Emergency Management Agency (FEMA) of the U.S. Department of Homeland Security administers the National Emergency Management Baseline Capability Assurance Program (NEMB-CAP) “to establish a baseline measurement of the nation’s emergency management capabilities and to help the emergency management community at all levels to improve its ability to prepare for and respond to emergencies and disasters of all kinds.”²⁷ NEMB-CAP uses the EMAP process and “associated assessment processes” in evaluating the emergency management capabilities of state and local governments and tribal organizations. According to one news report, 30 states completed baseline assessments by mid-September 2004.²⁸

Issues and Options for Congressional Action

The findings and recommendations of the 9/11 Commission concerning emergency preparedness standards include several facets that might be considered appropriate for congressional action. These include the three presented in Table 1 of this report, as follows:

- adoption of the Incident Command System (ICS) nationwide and encouragement of training in ICS procedures by conditioning federal funding on such actions;
- congressional approval of legislation to remedy indemnification and liability impediments to mutual aid agreements;
- promotion of the ANSI standards for private preparedness by the Department of Homeland Security (DHS).

Nationwide Adoption of ICS. The 9/11 Commission report found that a unified command structure on September 11, 2001, could have resolved some of the problems encountered in New York City that day.²⁹ Failures identified by commission staff (e.g., the difficulty fire commanders experienced communicating with their units, the lack of knowledge about the availability of “self-dispatched” responders, the failure to integrate the work of 911 operators and fire dispatchers, and the lack of coordination with dispatched units at the site of the attack) are capable of being addressed through ICS and associated training.

The ICS framework was developed in the 1970s after a series of California wildfires led some to observe recurring problems when more than one agency responded to the fires. These problems included inconsistent terminology and plans, inflexibility in responding to the shifting demands posed by a moving disaster, and a dearth of adequate facilities. ICS is generally recognized to be an appropriate framework to address these and other problems as the classification level of the

²⁷ See [<http://www.fema.gov/preparedness/baseline.shtm>], visited Feb. 4, 2005.

²⁸ Alice Lipowicz, “A National Emergency Preparedness Standard is on the Way,” *CQ Homeland Security CQ.Com*, visited Sept. 17, 2004.

²⁹ See *The 9/11 Commission Report*, p. 321

disaster may fluctuate, requirements of responders adjusted, functions added or subtracted, and units assigned as needed.³⁰ Five components comprise ICS: command, planning, operations, logistics, and finance/administration.

For decades, many emergency management officials have debated, refined, and adopted ICS. The reach and complexity of the attacks of September 11, 2001, stimulated renewed interest in ICS, and related systems, even before 9/11 Commission examined the issue. The Homeland Security Act of 2002 mandated that the Secretary of DHS build a “national incident management system” (NIMS) to respond to disasters and attacks.³¹ Subsequently, President Bush issued a presidential directive that required that the Secretary prepare a NIMS that must include, among other features, “a core set of concepts, principles, terminology, and technologies covering the incident command system.”³²

During the course of its investigation the commission concluded that the confusion and losses of September 11, 2001, indicated the need for widespread adoption of a unified command system. The report also noted, however, that the conditions of the tragedy in New York City differed in important respects from those that occurred at the Pentagon.³³ Since the National Response Plan (NRP) and NIMS will incorporate the ICS approach, it is likely that DHS and state and local governments will become increasingly adept at using and participating in an ICS controlled response.

While the level of awareness and acceptance of the ICS standard appears greater than in years past, few appear to disagree with the conclusion of the 9/11 Commission that action should be taken to ensure that it is adopted throughout the nation. In considering the recommendation Congress might elect to review several issues, including the following.

- *The appropriate role of Congress, or an executive branch agency such as DHS, in encouraging or mandating the method by which state and local governments train and manage emergency response operations.* Most of the disasters that occur throughout the United States are managed by local government officials, notably fire and law enforcement units. Some might contend that the imposition of the ICS system, as set out in the National Incident Management

³⁰ Under HAZWOPER regulations, for example, the incident commander assesses the need for resources under the following four levels: Level A, the highest degree of skin and respiratory protection of responders; Level B, the highest level of respiratory protection and a lower degree of skin protection; Level C, a lower level of respiratory protection but a comparable level of skin protection; and Level D, the lowest level of protection required. See *Incident Command* (Alsip, IL: North Central Environmental and Industrial Safety Training Center, 1995), p. 4-6.

³¹ Sec. 502(5) of P.L. 107-296, 6 U.S.C. 312(5).

³² U.S. President (George W. Bush), “Management of Domestic Incidents,” Homeland Security Presidential Directive-5, Sec. 15, Feb. 28, 2003, available at [<http://www.fas.org/irp/offdocs/nspd/hspd-5.html>], visited Feb. 4, 2005.

³³ See *The 9/11 Commission Report*, p. 315.

System (NIMS), signals federal involvement in an arena traditionally administered by state or local governments. Such individuals might argue that such an approach could lead to practices and decisions that may result in inefficiencies, more bureaucracy, or an erosion of state authority guaranteed under the Tenth Amendment of the U.S. Constitution.³⁴ Others might argue that the national threat posed by catastrophic terrorist attacks, or other disasters, requires a more integrated response capability that can only be built with federal involvement.³⁵

- *ICS might be a challenge for small jurisdictions with few resources that can be allocated to prepare for a multi-agency response.* Small or lower-income communities would likely be overwhelmed by a significant terrorist attack, and often find their resources stretched to respond to lesser events. If such communities are required to adopt ICS principles as a condition of receiving federal funds, some may contend that they are ill-equipped to spend time and effort meeting the federal requirement, particularly if federal funding terminates and the community is faced with funding the enhanced capabilities on its own. The caution developed by one source appears applicable:

A caveat should be entered here: ICS approaches incident control from the task, tactical, and strategic perspectives of the fire service and appears to assume a large, well-organized, and probably urban fire department. The system may not be appropriate for local governments with small or mid-sized fire departments and may require considerable refitting for nonfire emergency activities. Regardless of the size of the community, the ICS application should be flexible enough to allow for local differences in organization, politics, and needs. ICS should therefore be reviewed for applicability before it is adopted.³⁶

- *The ICS framework may help as well as hinder spontaneous and creative responses by volunteers.* Following the attacks in New York City on September 11, 2001, thousands of volunteers arrived at the site to provide any assistance possible. Many arrived without skills or without a connection to one of the many voluntary organizations that traditionally provide disaster assistance. The surge of people to a disaster scene adds to the complexity of the

³⁴ For example, see William C. Nicholson, "The New (?) Federal Approach to Emergencies," *Homeland Protection Professional*, vol. 2, Aug. 2003, p. 8.

³⁵ One summary of the application of ICS to the wildfires that burned thousands of acres noted that both local and out-of-state firefighters were not familiar with ICS protocol and procedures. See Sandra Sutphen, "California Wildfires: How Integrated Emergency Management Succeeds and Fails," in Richard T. Sylves and William L. Waugh, Jr., *Disaster Management in the U.S. and Canada* (Springfield, IL.: Charles C. Thomas, Pub., 1996), p. 182.

³⁶ Thomas E. Drabek and Gerard J. Hoetmer, eds., *Emergency Management: Principles and Practice for Local Government* (Washington: International City Management Association, 1991), p. 277.

event and creates additional demands on professional responders. Conversely, the positive effect volunteers have in helping victims as well as responders is well documented. The positive and negative impacts of ICS on spontaneous volunteer responses, both those initiated on impulse and those associated with some training could be investigated.³⁷ In addition, formal volunteer efforts could be part of that analysis. Community Emergency Response Teams (CERTs) represent one method by which the efforts of volunteers can be systematically brought into the response process.³⁸

- *Nationwide implementation of ICS is a challenge for certain types of first responders.* At a recent hearing before Congress a DHS official noted that administration officials have spoken of “compliance with the ICS as being possible in the short term.” Such a claim, however, is being challenged. Representatives of the law enforcement, fire fighting, and emergency medical response communities testified that some agencies need more time to adopt NIMS and work under an ICS framework. Also, the witnesses spoke of the need to further develop the NIMS document to address specific concerns of their sector.³⁹

In light of these concerns and cautions, Congress may explore the following options:

- fully endorse the recommendation of the 9/11 Commission regarding the ICS system by enacting legislation that would require the Department of Homeland Security (DHS) to condition homeland security funding for all state and local governments on adoption of and training associated with ICS procedures;
- endorse the recommendation, in part, by enacting legislation that would require DHS to condition homeland security funding for state and local governments that adopt the ICS framework and attain minimum accreditation status through EMAP or NEMB-CAP;

³⁷ For related research see James Kendra and Tricia Wachtendorf, “Creativity in Emergency Response to the World Trade Center Disaster,” and Seana Lowe and Alice Fothergill, “A Need to Help: Emergent Volunteer Behavior after September 11th,” both in: *Beyond September 11th: An Account of Post-Disaster Research*, available at [<http://www.colorado.edu/hazards/sp/sp39/>], visited Feb. 4, 2005.

³⁸ For example, see Colin A. Campbell, “CERT’s Growth Spurt,” *Homeland Protection Professional*, vol. 3, July 2004: pp. 30-38.

³⁹ U.S. Congress, House, Select Committee on Homeland Security, Subcommittee on Emergency Preparedness and Response, *Hearing on the National Incident Management System: Enhancing Response to Terrorist Attacks*, 108th Cong., 2nd sess., hearing, Sept. 29, 2004, unpublished.

- consider the recommendation as guidance to be given to DHS in evaluating the emergency response capabilities of state, local, and tribal governments under NEMB-CAP;
- mandate that federal funds be conditioned upon adoption and implementation of ICS, so long as applicants meet specified criteria or indicators of need, such as population size, history of disasters and a track record of management problems, or vulnerability to terrorist attack;
- through its oversight mechanisms, monitor the application of ICS as the new procedures set out in NIMS and the NRP are implemented;
- through legislation or report language, mandate that DHS evaluate the advantages and disadvantages of nationwide adoption of ICS, and report to Congress by a specified date; or,
- take no action and allow DHS, state emergency management officials, and local officials to design the approach most appropriate to the nation's and local areas' safety.

Federal Mutual Aid Legislation. The 9/11 Commission report includes the finding that “a serious obstacle to multi-jurisdictional response has been the lack of indemnification for mutual-aid responders in areas such as the National Capital Region.”⁴⁰ The report continues that federal and state emergency management officials should develop “a regional focus” and promote mutual aid agreements, and that federal legislation is needed to address “long-standing indemnification and liability impediments” to mutual aid emergency response in the Washington, D.C. area “and where applicable throughout the nation.”⁴¹

Relatively little support is offered by the commission for the recommendation that Congress enact legislation to rectify indemnification and liability impediments.⁴² Some may contend that this statement is given a lower status than the formal recommendations as it is presented as a statement in a paragraph, not a bolded

⁴⁰ *The 9/11 Commission Report*, p. 397.

⁴¹ *Ibid.*

⁴² To the extent found, references in the report and the pertinent staff statement evoked positive aspects of mutual aid at the Pentagon. For example, Staff Statement #14 noted that “Local, regional, state and federal agencies immediately responded to the Pentagon attack Regional mutual aid, as in Northern Virginia, could become a formal joint response plan with neighboring jurisdictions working together” See pp. 5,6. By comparison, the report noted that a lack of coordination hampered the response in New York City. However no references could be found in the report or staff statements indicating that indemnification and liability impediments obstructed the response in New York City. It is appropriate to note, however, that New York and five other states were not EMAC participants until after September 11, 2001. It is possible that the commission staff found that the absence of the liability protection offered through EMAC impeded response efforts from other states, but failed to include that finding in the report.

recommendation.⁴³ To assist Congress in more fully evaluating the 9/11 Commission report, this statement is examined as a commission recommendation in this report.

Emergency management mutual aid agreements have been negotiated and approved by the states for years.⁴⁴ Of greatest significance, the Emergency Management Assistance Compact (EMAC), approved by Congress in 1996, is the primary mutual aid agreement that facilitates the provision of emergency response aid among signatory states.⁴⁵ Also of note, proposed model mutual aid legislation has been developed by state emergency response organizations.⁴⁶

EMAC establishes a framework under which standard procedures and operational policies are agreed upon by the states to facilitate the provision of mutual aid when emergencies occur. Article VI of EMAC includes a provision which ensures that when officers or employees of one state render aid in another in emergency situations, they are treated as agents of the requesting state for tort and immunity purposes. The text of the article follows.

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes. No party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.⁴⁷

EMAC does not provide for indemnification of officers or employees held liable for acts or omissions not accomplished in good faith.⁴⁸

Through EMAC or specific provisions enacted into law many states have adopted mutual aid compacts that address liability concerns. For example,

⁴³ This statement is considered a recommendation in this CRS report as the 9/11 commission report uses the phrase “Congress should”

⁴⁴ For a summary of state emergency management mutual aid agreements see CRS Report RL32287 *Emergency Management and Homeland Security Statutory Authorities in the States, District of Columbia, and Insular Areas: A Summary*, by Keith Bea, L. Cheryl Runyon and Kae M. Warnock. For citations to emergency management mutual aid agreements adopted by each state see the “Mutual Aid” section of each state profile listed in Table 1 of CRS Report RL32287.

⁴⁵ For information on EMAC, see CRS Report RS21227, *The Emergency Management Assistance Compact (EMAC): An Overview*, by Keith Bea.

⁴⁶ See “Proposed Model Intrastate Mutual Aid Legislation,” at [<http://emacweb.org/docs/NEMA%20Proposed%20Intrastate%20Model-Final.pdf>], visited Feb. 4, 2005.

⁴⁷ P.L. 104-321, 110 Stat. 3880.

⁴⁸ Liability protection statutes ensure that individuals or organizations that take certain action cannot be sued. Indemnification statutes, by comparison, provide for government reimbursement of individuals and organizations for payments for which they are held liable.

Washington, D.C., Virginia, and Maryland, the sovereign entities within the National Capital Region (NCR), have incorporated EMAC into their statutory codes, in addition to other mutual aid provisions.⁴⁹

Through enactment of the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) the 108th Congress acted to resolve concerns that the existing provisions did not provide sufficient protection. The statute authorizes NCR state and local officials to enter into mutual aid agreements for emergency response and training purposes. The statute also specifies that EMAC provisions are not affected by this provision. This provision, limited to the NCR, was adopted in conference committee negotiations instead of the broader provision adopted by the House in its version of the legislation.⁵⁰

During the 109th Congress Members may elect to revisit the issue by considering the following options:

- enact legislation, comparable to that passed by the House in 2004 in H.R. 10, that specifically protects all emergency responders from liability concerns and provides indemnification;
- assess the scope of the problem and determine whether legislation should: reach beyond the provisions of Article VI of EMAC, solely address the issue of indemnification or extend other protections, or authorize the use of disaster relief funds to reimburse states and municipalities for costs associated with providing mutual aid;⁵¹
- assess the impact of such legislation on EMAC-based agreements among the states, and the consequences of increased federal action in an area that has historically been addressed among the states; or,
- evaluate the areas in which existing mutual aid agreements, including EMAC, have proven deficient and could benefit from federal action.

⁴⁹ See D.C. Code Ann. §7-2332, §7-2206; Virginia Code §44-146.28:1, §44-146.14(b); Maryland Criminal Procedure Code §2-105(e).

⁵⁰ Section 5101 et. seq. of H.R. 10, as approved by the House, (“Mutual Aid and Litigation Management Authorization Act of 2004”) would have limited liability of responders, throughout the nation, to the extent permitted by law of the source state of the responding party.

⁵¹ Congress appropriates disaster relief funds to DHS to pay for the costs associated with the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. For background see CRS Report RL32242, *Emergency Management Funding for the Department of Homeland Security: Information and Issues for FY2005*, by Keith Bea, Shawn Reese, Wayne Morrissey, Frank Gottron, and C. Stephen Redhead.

ANSI Standards for Private Sector Emergency Preparedness. The 9/11 Commission report endorsed the emergency management standards recommended by ANSI; those standards are based upon NFPA 1600. According to the commission, the adoption of such standards is essential, since the private sector owns and manages the majority of the critical infrastructure in the United States. Private civilians at their places of employment may be the first responders to the scene of an attack.⁵²

ANSI has traditionally operated on the basis that the standards adopted by the organization are voluntary. If the recommendation is adopted, consumers and government officials recognize that a company or product in compliance with ANSI standards meets specified levels of quality and safety.

Witnesses at a hearing held in November 2003 reportedly testified that “the private sector remains largely unprepared for a terrorist attack,” and “the lack of a widely embraced private sector preparedness standards was a principal contributing factor to this lack of preparedness.” The 9/11 Commission concluded that private preparedness plans should consist of three components — evacuation plans, communications capabilities, and continuity of operations plans.

The Commission report does not recommend legislative action on this issue; instead, the report urges DHS to promote adoption of the standard and encourages private sector action through insurance and credit-rating actions. Members of the Commission may have concluded that congressional action might not be appropriate because legislation might involve a discussion of whether the Unfunded Mandates Reform Act (UMRA) provisions would be at issue.⁵³ UMRA established mechanisms to limit federal imposition of unfunded mandates on other levels of government (called “intergovernmental mandates”) and on the private sector. The statute allows points of order to be raised if committees do not include a report on mandates projected to cost the private sector \$117 million or more.⁵⁴

Options that might be considered by Congress in this area include:

- require that private companies adopt ANSI standards in order to be certified as a “responsible source” under the Federal Acquisition Regulation (FAR);⁵⁵

⁵² *The 9/11 Commission Report*, p. 398.

⁵³ P.L. 104-4, 2 U.S.C. 658(5), (7).

⁵⁴ For background on UMRA see CRS Report RS20058, *Unfunded Mandates Reform Act Summarized*, by Keith Bea and Richard S. Beth. See provisions at 2 U.S.C. 658b(c), 2 U.S.C. 658c, 2 U.S.C. 658d.

⁵⁵ Under FAR, such companies must meet certain compliance requirements. For example, pursuant to the Drug-Free Workplace Act of 1988 (P.L. 100-690), companies must agree to provide a drug-free workplace to employees. Congress could enact legislation that similarly required that companies meet the ANSI emergency preparedness standard. For the FAR regulation, see Subpart 23.5, “Drug-Free Workplace,” at [<http://www.arnet.gov/far/current/pdf/FAR.book.pdf>], visited Feb. 4, 2005.

- enact legislation authorizing funds that would extend existing accreditation processes, either or both EMAP and NEMB-CAP, to the private sector, bringing to the companies the resources necessary to fully assess their emergency preparedness capabilities;
- approve incentives for the private sector to adopt the ANSI standards, perhaps through the use of business tax write-offs, extension of tax credits, tax deduction of accelerated depreciation, or conditioning the receipt of federal assistance such as Small Business Administration loans;⁵⁶ or
- take no action.

On September 23, 2004, DHS released an Internet-based campaign that provides instructions to businesses on preparedness for and response to attacks and other disasters. Continuity of business plans, physical security, cost estimates of certain preparedness activities, and emergency plans are components of the program.⁵⁷ Businesses can also obtain information on preparedness activities by calling a toll-free number established by DHS (1-800-237-3239).

Additional Issue Areas and Options

The 9/11 Commission focused on broad policy areas, notably the intelligence failures related to the attacks. The emergency management issues considered by the commission were limited to those observed during the immediate response to the attacks. While the work of the commission has raised awareness of emergency response issues, it arguably has identified only the tip of the iceberg of a vast area of public policy. The devastation of September 11 made evident a number of issues, deficiencies, and problems that might be explored by Congress. These include the following.

- *Authorities and triggers for federal action.* Both the attack on the Pentagon and in New York City resulted in explosions. The Stafford Act authorizes the President to issue a major disaster declaration, and therefore dedicate the full range of federal resources, in the event of fires or explosions “regardless of cause.”⁵⁸ Some terrorist attacks, however, may involve the dispersal of chemical weapons, prolonged small arms fire in different locations, cyber-attacks, or other causal agents that are not covered by existing law. To a certain extent, the President may use the authority under the National Emergencies Act to expedite federal assistance and coordinate

⁵⁶ For a brief summary of the impact of tax incentives on the economy see David L. Brumbaugh, “An Economic Framework for Evaluating Taxes,” at [<http://www.congress.gov/brbk/html/ebtxr30.html>], visited Feb. 4, 2005.

⁵⁷ “Ready Business,” at [<http://www.ready.gov/business/index.html>], visited Feb. 4, 2005.

⁵⁸ 42 U.S.C. 5122(2).

response. At issue may be the adequacy of existing emergency response authorities and triggers and whether there is a need to establish legislative standards for presidential or other executive actions.⁵⁹

- *Emergency responder and civilian health.* Some have contended that the air was so full of pollutants in downtown Manhattan on September 11, 2001, that it could have been declared a site for federal assistance under major environmental laws. The adequacy of existing laws, and the need for standards for measuring threats to responders and civilians might be considered by Congress.⁶⁰
- *Emergent or spontaneous actions.* Disaster research indicates that the behavior of responders and civilians at the scene of a catastrophe does not resemble the horrified mass of people running away and trampling each other (as often represented in movies) but concerned and committed individuals willing to sacrifice to help others. The effect of federal policy on informal emergency response activities might be examined. As summarized by one team of researchers, “Creative action as exhibited by emergency response personnel and groups after the attacks yielded not only positive results but also conflicts and challenges, not unlike those documented in prior studies of the convergence phenomenon after disasters, in which volunteers, opportunists, and others converge on the scene, adding an element of uncontrollability that can complicate emergency operations, safety, and security.”⁶¹

Conclusion

The report by the 9/11 Commission has stimulated discussion throughout the nation on a range of issues, primarily concerned with intelligence reform, associated with the attacks of 2001. Recommendations in the report section “Protect Against and Prepare for Terrorist Attacks” concern the capabilities of the public and private sectors to adequately prepare for and respond to further attacks. Those recommendations pertinent to the adoption or use of emergency management standards have been discussed in this report.

⁵⁹ For background on the National Emergencies Act see CRS Report RS21017, *Terrorist Attacks and National Emergencies Declarations*, by Harold C. Relyea.

⁶⁰ See sections on public health studies and environmental hazard assessment in: CRS Report RL31464 *Federal Disaster Policies After Terrorists Strike: Issues and Options for Congress*, coordinated by Keith Bea.

⁶¹ Natural Hazards Research and Applications Information Center, Public Entity Risk Institute, and Institute for Civil Infrastructure Systems, *Beyond September 11th: An Account of Post-Disaster Research* (Boulder, CO: University of Colorado, 2003), p. 6, available at [<http://www.colorado.edu/hazards/sp/sp39/>], visited Feb. 4, 2005.

While most observers believe some of the recommendations have merit and may lead to improved protection and response capabilities, it may also be argued that adoption of the recommendations may impact long-standing practices, impose new obligations, and possibly affect constitutional protections for the states.

It appears that the federal role in emergency management will continue to grow in certain areas, presaging a more activist federal government and a greater span of federal control. It is also possible that the actions taken by Congress will stimulate and maintain a commitment of non-federal resources and capabilities by funding programs, encouraging DHS and the states to incorporate standards in their operational procedures, and more fully engage in emergency management activities. On the other hand, Congress might take no action on some or all of the recommendations, allowing the private sector and the state and local governments to develop mechanisms for improving emergency response capabilities.