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Emergency Management Preparedness Standards: Overview and Options for Congress

Updated September 21, 2004

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Emergency Management Preparedness Standards: Overview and Options for Congress

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 commission 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. Legislation pending before the 108th Congress addresses these recommendations. In addition, Congress might debate or take action on other matters to improve emergency management procedures, as the commission report arguably addresses only some of the issues that have been raised by others.

Several bills pending before Congress are relevant to an inquiry on emergency standards. Legislation has been introduced to (1) authorize or require entities to establish standards (H.R. 3158, H.R. 3227, H.R. 4830, H.R. 5024, S. 216, S. 930); (2) condition federal assistance to state and local governments based upon their compliance with standards (S. 1245, S. 2021); (3) urge the creation of standards for specific purposes (H.R. 2537 and S. 118 — warning systems — and H.R. 2878 — reporting requirements); or (4) express the sense of Congress (H.R. 5040, S. 2774).

General agreement exists on the intent of the commission’s recommendations in this policy area — improvement of the nation’s emergency response capabilities. The policy debate could include discussion of the implications and consequences of adopting the recommendations, including 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 substance and nature of the intergovernmental partnership in homeland security and emergency management response efforts? How would existing state authorities in areas other than standards be affected by congressional action? This report presents background information on the commission’s findings, on emergency response standards, and on options Congress might consider to address the problems identified in the commission’s report. This report will be updated as legislative developments 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 (also referred to as the “9/11 Commission” or simply “the Commission”) focus on the need to reform the intelligence community of the United States.¹ In addition, based upon two days of public hearings and subsequent work by commission staff on the responses at the sites of the attacks in New York City and Virginia, the report includes recommendations directed at improving emergency response procedures and capabilities through the adoption and use of standard modes of organization, legislation, and planning.²

The 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 were viewed to be systemic, and 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

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 Aug. 4, 2004.

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 Aug. 9, 2004.

³ *Ibid.*, p. 315. For details see also pages 8 through 10 of commission staff statement #14, available at [http://www.9-11commission.gov/hearings/hearing11/staff_statement_14.pdf], visited Aug. 9, 2004.

coordinated, just as different branches of the U.S. military are. Coordination entails a unified 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 Aug. 6, 2004.

**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. See page 15 of this report.</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. See page 18 of this report.</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. See page 19 of this report.</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. Congress is expected to consider actions on the recommendations. 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. 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.*” 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 concerns.⁷ 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.

⁷ 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.

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, there are other options Congress might consider.

- *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, 2001.⁸ Congress might consider options related to monitoring the health of such responders.

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.

⁸ 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 Aug. 12, 2004.

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.”⁹ 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 is 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.¹⁰

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.”¹¹ 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 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.”¹²

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, 2004.¹³ 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

⁹ For information see [http://www.ansi.org/about_ansi/overview/overview.aspx?menuid=1], visited Aug. 5, 2004.

¹⁰ 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 Aug. 5, 2004.

¹¹ 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 Aug. 5, 2004.

¹² Ibid.

¹³ 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 Aug. 5, 2004.

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.”¹⁴

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.¹⁵ 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.¹⁶

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.

¹⁴ For more information on the standards database project, see [http://www.ansi.org/news_publications/news_story.aspx?menuid=7&articleid=718], visited Aug. 5, 2004.

¹⁵ For background and information on NFPA, see [<http://www.nfpa.org/catalog/home/AboutNFPA/NFPAOverview/NFPAOverview.asp>, visited] Aug. 5, 2004.

¹⁶ 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.

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

Component or element	Explanatory descriptions
<p>1. Administration 1.1 — Scope of the standard establishes common criteria for disaster/emergency programs.</p>	<p>1.1 — Private and public entities have unique needs and capabilities; programs designed accordingly.</p>
<p>2. Reserved for Referenced Publications</p>	<p>not applicable</p>
<p>3. Definitions See NFPA for details.</p>	<p>See NFPA for details.</p>
<p>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.</p>	<p>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.</p>
<p>5. Program elements: 5.1 — Program should address all phases of disaster management. 5.2 — Compliance with legal authorities. 5.3 — Identification of hazards and vulnerabilities. 5.4 — Development of hazard mitigation strategy. 5.5 — Identification of means to allocate resources. 5.6 — Composition of mutual aid agreements. 5.7 — Development of plans and identification of elements. 5.8 — Development of means to control response and recovery operations. 5.9 — Establishment of warning procedures. 5.10 — Development and implementation of operational procedures. 5.11 — Identification of logistical resources and facilities to support response efforts. 5.12 — Assessment of training needs and development of curriculum.</p>	<p>5.1 — Management phases include mitigation, preparedness, response, and recovery. 5.2 — Include periodic review of authorities and suggested revisions. 5.3 — Use suggested means for identifying hazards and conducting risk assessments. 5.4 — Components of such strategies are identified. 5.5 — The categories of resources are identified, along with organizations. 5.6 — Identifies the types of such agreements and some characteristics and components. 5.7 — Attributes of plans and the processes to be followed are identified. 5.8 — Incident management system that includes procedures to facilitate control of disaster area should be developed. 5.9 — Protocols should be tested and include interoperability testing. 5.10 — Procedures are to be established to minimize property damage, assess damages, and provide for continuity of operations. 5.11 — The capabilities of facilities and associated resources should meet expected needs. 5.12 — Training and curriculum should comply with applicable regulations and records maintained.</p>

Component or element	Explanatory descriptions
5. Program elements (cont.): 5.13 — Evaluation of procedures and exercises. 5.14 — Development of procedures to provide information. 5.15 — Development of finance and administration procedures.	5.13 — Corrective actions should be taken to address deficiencies. 5.14 — Public information capabilities should identify communication modes. 5.15 — Framework should allow for flexibility and means of expediting requests.

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.¹⁷

Occupational Safety and Health Administration (OSHA).¹⁸ 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.¹⁹ Congress directed OSHA to develop the regulation in 1986, after finding OSHA's actions on hazardous material response to a 1980 authorization deficient.²⁰

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,

¹⁷ 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).

¹⁸ Summary of HAZWOPER standard primarily derived from: CRS Report RL31680, *Homeland Security: Standards for State and Local Preparedness*, by Ben Canada.

¹⁹ 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).

²⁰ 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).

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.

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.²¹ 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.²²

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."²³ As part of the process, evaluators examine the components of a

²¹ 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 Aug. 5, 2004.

²² See [http://www.emaponline.org/What/Background/Description_Full.cfm], visited Aug. 5, 2004.

²³ Email communication of July 23, 2004, with William Waugh, Department of Public Administration and Urban Studies, Georgia State University, 2004 member of the EMAP (continued...)

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.²⁴

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."²⁵ NEMB-CAP uses the EMAP process and "associated assessment processes" in evaluating the emergency management capabilities of state and local governments and tribal organizations.

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.²⁶ 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

²³ (...continued)
commission.

²⁴ 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 Aug. 5, 2004.

²⁵ See [<http://www.fema.gov/preparedness/baseline.shtm>], visited Aug. 5, 2004.

²⁶ See *The 9/11 Commission Report*, p. 321

operators and fire dispatchers, and the lack of coordination with dispatched units at the site of the attack are situations capable of being addressed through ICS and associated training.²⁷

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 disaster may fluctuate, requirements of responders adjusted, functions added or subtracted, and units assigned as needed.²⁸ 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.²⁹ 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.”³⁰

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.³¹ 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.

²⁷ Refer to pages 8 and 9 of Commission Staff Statement #14 at [http://www.9-11commission.gov/hearings/hearing11/staff_statement_14.pdf], visited Aug. 9, 2004.

²⁸ 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.

²⁹ Sec. 502(5) of P.L. 107-296, 6 U.S.C. 312(5).

³⁰ 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 Aug. 12, 2004.

³¹ See *The 9/11 Commission Report*, p. 315.

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, however, 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 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.³² 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.³³
- *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.

³² For example, see William C. Nicholson, "The New (?) Federal Approach to Emergencies," *Homeland Protection Professional*, vol. 2, Aug. 2003, p. 8.

³³ 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.

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.³⁴

- *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 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.³⁵ 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.³⁶

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;

³⁴ Thomas E. Drabek and Gerard J. Hoetmer, eds., *Emergency Management: Principles and Practice for Local Government* (Washington: International City Management Association, 1991), p. 277.

³⁵ 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 Aug. 10, 2004.

³⁶ For example, see Colin A. Campbell, "CERT's Growth Spurt," *Homeland Protection Professional*, vol. 3, July 2004: pp. 30-38.

- 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.”³⁷ 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.”³⁸

Relatively little support is offered by the commission for the recommendation that Congress enact legislation to rectify indemnification and liability impediments.³⁹ 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

³⁷ *The 9/11 Commission Report*, p. 397.

³⁸ *Ibid.*

³⁹ 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.⁴⁰ To assist Congress in more fully evaluating the 9/11 Commission report, this statement is examined as a commission recommendation here.

Emergency management mutual aid agreements have been negotiated and approved by the states for years.⁴¹ 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.⁴²

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.⁴³

EMAC does not provide for indemnification of officers or employees held liable for acts or omissions not accomplished in good faith.⁴⁴

Through EMAC or specific provisions enacted into law, many states have adopted mutual aid compacts that address liability concerns. For example, Washington, D.C., Virginia, and Maryland, the sovereign entities within the National Capital Region, have incorporated EMAC into their statutory codes, in addition to

⁴⁰ This statement is considered a recommendation in this CRS report as the 9/11 commission report uses the phrase “Congress should”

⁴¹ 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.

⁴² For information on EMAC, see CRS Report RS21227, *The Emergency Management Assistance Compact (EMAC): An Overview*, by Keith Bea.

⁴³ P.L. 104-321, 110 Stat. 3880.

⁴⁴ 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.

other mutual aid provisions.⁴⁵ Given the liability protection that EMAC provides to signatory states, including those in the National Capital Region, Congress might consider the following options:

- act upon the recommendation and enact federal legislation that specifically protects emergency responders from liability concerns and provides indemnification;
- assess the need to identify a limited scope of the legislation — that is, whether the legislation should reach beyond the provisions of Article VI of EMAC, should solely address the issue of indemnification or extend other protections, or exceed the recommendation of the 9/11 Commission by authorizing, for example, the use of disaster relief funds to reimburse states and municipalities for costs associated with providing mutual aid;⁴⁶
- 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.

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, and should be assured that adequate preparedness measures have been taken.⁴⁷

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.

According to a staff statement issued by the 9/11 Commission, many witnesses at a hearing held in November 2003 testified that “the private sector remains largely

⁴⁵ 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).

⁴⁶ 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.

⁴⁷ *The 9/11 Commission Report*, p. 398.

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.”⁴⁸ 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 include a recommendation for Congress 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.⁴⁹ 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.⁵⁰

Among the options that might be considered by Congress in this area are the following:

- require that, in order for private companies that wish to do business with the federal government be certified as a “responsible source” under the Federal Acquisition Regulation (FAR), they must adopt the ANSI standards;⁵¹
- 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,

⁴⁸ See 9/11 Commission Staff Statement #14, *Crisis Management*, p. 3, available at [http://www.9-11commission.gov/hearings/hearing11/staff_statement_14.pdf], visited Aug. 12, 2004.

⁴⁹ P.L. 104-4, 2 U.S.C. 658(5), (7).

⁵⁰ 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.

⁵¹ 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 Aug. 5, 2004.

or conditioning the receipt of federal assistance such as Small Business Administration loans;⁵² or

- take no action.

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.”⁵³ 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 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.⁵⁴
- *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.⁵⁵

⁵² 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 Sept. 21, 2004.

⁵³ 42 U.S.C. 5122(2).

⁵⁴ For background on the National Emergencies Act see CRS Report RS21017, *Terrorist Attacks and National Emergencies Declarations*, by Harold C. Relyea.

⁵⁵ 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.

- *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.”⁵⁶

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 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 pertinent to the adoption or use of emergency management standards have been discussed in this report.

The Commission’s recommendations on the use of such standards will likely generate congressional deliberation. 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, including constitutional protections for the states. For example, the existing intergovernmental partnership involved in emergency management requires the full participation of state, local and tribal governments. Therefore, in acting on the recommendations, it is likely that Congress will debate and consider the ramifications on that partnership. It is possible that the federal role in emergency management could grow in certain areas, presaging more active federal involvement and control. It is also possible that Congress may take action that stimulates and maintains non-federal resources and capabilities by encouraging DHS and the states to evaluate the current use of standards. 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.

⁵⁶ 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 Aug. 9, 2004.