

CRS Report for Congress

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Overview of Components of the National Response Plan and Selected Issues

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Summary

Congress and the President have directed the Department of Homeland Security (DHS) to consolidate existing emergency response plans into one national response plan (NRP) and develop a national incident management system (NIMS). The NRP, currently under development, will establish an overarching structure to coordinate federal resources in responding to a significant emergency including an attack, natural disaster, accidental hazardous material spill, or other crisis that overwhelms state resources. The Administration plans to combine five existing plans into the NRP; it released an Initial NRP on October 10, 2003, and projects the final NRP to be completed in early 2005. DHS released the NIMS on March 1, 2004, thereby establishing a standard incident command system (ICS) to guide the response to major catastrophes. Related issues that Congress may consider include the implication of instituting a new administrative structure, the needs and mechanisms for sharing classified information, federalism implications, the recommendation of the 9/11 commission concerning unified command structures by emergency response agencies, and the role of non-federal responders. This report will be updated as developments warrant.

Authorities (by Elizabeth Bazan, American Law Division)

Authority for the creation of the National Response Plan (NRP) and the National Incident Management System (NIMS) draws from two sources, Subsections 502(5) and (6) of the Homeland Security Act of 2002, P.L. 107-296 (passed Nov. 25, 2002), and Sections 15 and 16 of the Homeland Security Presidential Directive 5 (hereinafter HSPD-5). In Subsection 502(5) of P.L. 107-296, the Secretary of Homeland Security, acting through the Under Secretary for Emergency Preparedness and Response, is directed to “[build] a comprehensive national incident management system with federal, state, and local government personnel, agencies, and authorities, to respond to” attacks and disasters. Subsection 502(6) requires the consolidation of “existing Federal Government emergency response plans into a single, coordinated national response plan.”

HSPD-5, issued on February 28, 2003, provides a framework for management of domestic incidents. Section 15 of the directive requires development of NIMS to include the terminology; principles; concepts of the incident command system (ICS); multi-agency coordination systems; unified command; training; identification and management of resources; qualifications and certification; and collection, tracing, and reporting of incident information and incident resources. Appendix A of NIMS sets out the ICS, which requires the establishment of standard components (command, operations, planning, logistics, and finance/administration) when emergency officials respond to a major catastrophe. A sixth, intelligence, may also be established if required. Section 16 of this presidential directive mandates that the Secretary of Homeland Security “develop, submit for review to the Homeland Security Council, and administer a National Response Plan (NRP).” This plan must integrate federal domestic prevention, preparedness, response, and recovery plans into one all-discipline, all-hazard plan. In developing and implementing the NRP, the secretary must consult with the Assistant to the President for Economic Policy, the Director of the Office of Science and Technology Policy, and other appropriate federal officials. The NRP is to be unclassified, although, if required, certain operational aspects may be included in classified annexes to it.¹

HSPD-5 sets out four goals for the NRP: (1) Through NIMS the NRP is to provide the structure and mechanisms for national-level policy and operational direction for federal support to state and local incident managers, and for the exercise of direct federal authorities and responsibilities. (2) The NRP is to include protocols for operating under different threats or threat levels; in so doing, it must incorporate existing federal emergency and incident management plans (modified as needed) as integrated components of the NRP or as supporting operational plans, as well as operational plans or annexes concerning public affairs, intergovernmental communications, and others as needed. (3) The NRP must be consistent with regard to reporting incidents, providing assessments, and making recommendations to the President, the Secretary, and the Homeland Security Council. (4) The NRP is to include requirements for steady improvements drawn from testing, exercises, and experience with incidents, as well as new information and technologies.

Existing Plans

Federal Response Plan. (By Keith Bea, Government and Finance Division.) The *Federal Response Plan* (FRP) was developed in the early 1990s by the Federal Emergency Management Agency (FEMA) pursuant to disaster assistance authority set out in the Robert T. Stafford Disaster Relief and Emergency Relief Act (the Stafford Act, 42 U.S.C. 5121 et seq). Consequence management actions guided by the FRP are triggered when the President issues a major disaster declaration. The FRP coordinates the delivery of federal services and the actions of federal and non-federal officials in the area included in the presidential declaration. Much of the coordination is achieved through the appointment of the federal coordinating officer (FCO) by the President (42 U.S.C. 5143). Under the terms of the FRP, 25 federal agencies and the American Red Cross provide resources and support in response to requests from officials on the scene in the disaster

¹ The NIMS document is available at [<http://www.dhs.gov/interweb/assetlibrary/NIMS-90-web.pdf>]. The text of the initial NRP, still in process, is available at [http://www.nemaweb.org/docs/national_response_plan.pdf], both visited Aug. 2, 2004.

area. Twelve emergency support functions (ESFs) identify the primary and secondary agencies responsible for providing assistance and ensuring that immediate needs are met to save lives and protect property from further damage, to the extent possible. In addition, the FRP includes annexes that address recovery, support, and terrorism incident activities. The FRP is available at [<http://www.fema.gov/rrr/frp/>].

CONPLAN. (By Bill Krouse, Domestic Social Policy Division.) Issued in January 2001 and consistent with President Clinton's decision directive on counterterrorism (PDD-39, issued June 21, 1995), and signed by seven agency heads, the Interagency Domestic Terrorism Concept of Operations Plan (CONPLAN) "outlines an organized and unified capability for a timely, coordinated response by federal agencies to a terrorist threat or act." CONPLAN, like PDD-39, distinguishes between *crisis management* (prevention of and management of the response to threats or incidents) and *consequence management* (coordination of federal response to support state and local governments affected by an incident). Under CONPLAN, the Federal Bureau of Investigation (FBI) is designated the lead federal agency (LFA) responsible for crisis management in the event of a terrorist threat or incident. Among other responsibilities, the FBI is charged with forming and deploying interagency domestic emergency support teams (DESTs). Depending upon the type of terrorist threat or incident, the DEST would marshal the resources of the appropriate federal agencies, including units of the Departments of Defense and Energy, so that their combined intelligence and tactical expertise could be brought to bear in a cohesive and coordinated manner. When the Attorney General determines that the appropriate situational response has shifted from crisis to consequence management, the FBI would transfer the LFA role to FEMA. CONPLAN is available at [<http://www.fema.gov/rrr/conplan/conpln2c.shtm>].

Radiological Response Plan. (By Mark Holt, Resources, Science, and Industry Division.) The Federal Radiological Emergency Response Plan (FRERP), which became effective May 8, 1996, is the operational plan for federal agencies to carry out their responsibilities during peacetime radiological emergencies. The plan designates an LFA to coordinate the federal response to each type of radiological emergency. For example, the Nuclear Regulatory Commission (NRC) is the LFA for radiological emergencies at nuclear reactors, nuclear fuel facilities, and other fixed facilities licensed by NRC or by states with licensing authority. The Department of Energy (DOE) and Department of Defense (DOD) are the LFAs for facilities they own. For transportation accidents, NRC is the LFA for shipments by its licensees; DOE and DOD are the LFAs for their own shipments; and EPA is the LFA for other shipments. Federal off-site non-radiological resource support is to be coordinated by FEMA. The plan also gives several other federal agencies specific responsibilities for radiological emergency response, such as the role of the FBI in cases of sabotage or terrorism. The FRERP may be found at [<http://www.au.af.mil/au/awc/awcgate/frerp/frerp.htm>].

National Contingency Plan. (By Mark Reisch, Resources, Science, and Industry Division.) The National Contingency Plan (NCP, at 40 CFR Part 300) was originally established under the Clean Water Act to coordinate the responses of federal agencies to oil spills in coastal areas. Substantial revisions to the Plan were required after 1980, however, when Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, 42 U.S.C. 9601-9675, often referred to as "Superfund"), and it was further revised to implement requirements of the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et. seq.*). CERCLA authorizes a federal response

to a public health or environmental threat due to the release of a hazardous substance, pollutant, or contaminant, as well as long-term remedial work at contaminated sites where a release may present an imminent and substantial danger to the public health or welfare, or the environment (CERCLA §104(a)). The National Contingency Plan created the National Response Team, which is made up of 16 federal agencies, and Regional Response Teams (RRTs), which additionally include state and (as agreed upon by the states) local government representatives; area committees and local committees are also provided for in the RRTs. The NCP provides for three kinds of activities: (1) preparedness planning and coordination for response, including the roles of federal and state agencies; (2) notification and communications from the time an incident is first reported, and including public information and community relations activities; and (3) response operations at the scene of a discharge or release. The NCP designates the U.S. Environmental Protection Agency (EPA) as the LFA for oil and hazardous substance releases on land, and gives jurisdiction to the U.S. Coast Guard (USCG) for spills in coastal waters and deepwater ports. Response actions are directed and coordinated by an on-scene coordinator, who is designated by the lead agency. Information on and links to elements of the NCP may be found at [<http://www.epa.gov/oilspill/ncpover.htm>].

Distant Shores. (By Karma Ester, Domestic Social Policy Division.) In 1994 the Department of Justice, in conjunction with the U.S. Coast Guard and the Department of Defense, reportedly developed “Operation Distant Shores” to respond to a potential mass influx of migrants to the United States, notably asylum seekers from Haiti or Cuba.² According to news reports, the plan included using abandoned and underutilized military bases to provide temporary shelter for unauthorized migrants while they awaited processing, and increasing the number of U.S. Coast Guard and other military vessels patrolling the Florida Straits in order to interdict as many migrants at sea as possible. In 1995 the Clinton Administration reportedly expanded the plan to address similar mass migrations by land as well as by sea. Scant documentation exists on Operation Distant Shores, which reportedly calls for the participation of 40 federal, state, and local agencies. Currently DHS reportedly is drafting an update known as “Vigilant Century” to address mass migration. It is not known when this new plan will be released. Information on the “Alien Migrant Interdiction” activities of the USCG are presented at [<http://www.uscg.mil/hq/g-o/g-opl/mle/amioyear.htm>].

Development of the NRP

The Homeland Security Act does not establish a schedule for development of the NRP.³ HSPD-5 requires that certain actions be taken by specified dates, including publishing an initial version (INRP) and presenting a plan for development by April 1, 2003; reviewing authorities and preparing recommendations for the President on revisions needed to implement the NRP by September 1, 2003; and ensuring that federal agency heads revise existing plans to correspond to the INRP by June 1, 2003. It is not possible

² Alfonso Chardy, “U.S. Ready in Case of Major Exodus from Cuba,” *Miami Herald*, April 20, 2003, p. 1A. Kevin Hall, “Mexico Mum on US Plan to Thwart Mass Exodus,” *Journal of Commerce*, April 11, 1995, p. 1A.

³ Section 507 of P.L. 107-296 specifies that FEMA remain the lead agency for the FRP and required revision of the FRP within 60 days of enactment. The *Interim Federal Response Plan* was released in January 2003.

to determine the extent to which these deadlines were met, but it appears that considerable progress has been achieved with the release of the INRP on October 10, 2003.⁴ Section 20 of HSPD-5 requires that federal agencies use grant and contracting authority to ensure that states and localities adopt NIMS. One of the recommendations of the National Commission on Terrorist Attacks Upon the United States coincides with this requirement.

News reports and statements from professional associations and other sources indicate that throughout 2003 DHS sponsored meetings with representatives of federal and non-federal organizations' stakeholders. Concerns and questions have been raised regarding the exclusion of some stakeholders and the process used to develop the NRP.⁵ Others, however, have expressed support for the approach taken by DHS.⁶

Selected Issues

The development of the NRP and NIMS presents Members of the 108th Congress with several options, including oversight of DHS implementation of the requirement in Section 502(6) of the Homeland Security Act; investigation of the process used by DHS in developing the NRP; consideration of the need to revisit underlying statutory authorities; coordination with constituents (notably state and local response organizations) that will implement the NRP; and assessment of the adequacy of funding to ensure that the response to attacks, natural disasters, accidents, and other emergencies is sufficient. The breadth and reach of the NRP raises many issues within each of these categories of possible congressional action.⁷ They include:

- The Stafford Act authorizes the President to issue a “major disaster” or an “emergency” declaration under specified circumstances.⁸ The FRP states that “[n]o direct federal assistance is authorized prior to a Presidential declaration.”⁹ HSPD-5, however, requires that the Secretary of Homeland Security coordinate the federal response “if and when any

⁴ One author identified as being familiar with the process has noted: “Observers of the federal government may be pleasantly surprised to see such close adherence to the President’s timetable.” See William C. Nicholson, “The New (?) Federal Approach to Emergencies,” *Homeland Protection Professional*, vol. 2, Aug. 2003, p. 8.

⁵ Ibid. and Martin Edwin Andersen, “Local Officials Howl at DHS Emergency Management Plan,” *CQ Homeland Security*, Aug. 8, 2003, at [<http://homeland.cq.com/hs/display.do?dockey=/usr/local/cqonline/docs/html/hsnews/108/hsnews108-000000794874.html@allnews&metapub=HSNEWS&seqNum=1&searchIndex=1>], visited Dec. 11, 2003.

⁶ National Emergency Management Association, “State Emergency Managers Support Stakeholder Approach by DHS,” news release of Oct. 15, 2003.

⁷ For an overview of issues and recommendations developed by the U.S. National Response Team, see U.S. National Response Team, *Reconciling Federal Emergency Response Plans — NRT Homeland Security Recommendations* (Washington, 2003), at [[http://www.nrt.org/production/nrt/home.nsf/resources/Publications1/\\$File/Final_NRT_Plan_Reconciliation_Analysis_Report.pdf](http://www.nrt.org/production/nrt/home.nsf/resources/Publications1/$File/Final_NRT_Plan_Reconciliation_Analysis_Report.pdf)], visited Dec. 15, 2003.

⁸ 42 U.S.C. 5170, 5191.

⁹ U.S. Federal Emergency Management Agency, *Federal Response Plan* (Washington: Jan. 2003), p. 7.

one of the following four conditions applies ...”¹⁰ Three of the four conditions do not involve a presidential declaration. To what extent, if any, does the authority in HSPD-5 overreach the authority given by Congress in the Stafford Act, the Homeland Security Act, or other statutes?

- Under FRERP, lead federal agencies have established emergency operations centers and coordinating mechanisms that may not mesh with the system envisioned by the INRP. For example, one of the functions of the NRC emergency operations center is to provide information about commercial nuclear reactor emergencies, but the INRP calls for the National Homeland Security Operations Center (HSOC) to perform that function. The establishment of a Joint Field Office for a radiological emergency, as recommended by the INRP, could also prove problematic during a commercial reactor incident, because the current system would rely on the reactor operator’s emergency center for local coordination.
- The concerns of certain groups, including public works organizations, agricultural disaster experts (see H.R. 3157, passed by the House on November 17, 2003), and public health authorities, do not appear to be addressed in the INRP. Questions may be raised about the lack of representation of these groups in the process thus far, as well as other process concerns. Also, the inclusion of federal response plans for specified public health emergencies (smallpox, SARS, and pandemic influenza) may require additional consideration.
- HSPD-5 requires that the NRP be unclassified, but provides that if “certain operational aspects require classification,” they are to be included as classified annexes. How will the inclusion of classified information related to mass population migrations impact the ability of federal and non-federal agencies to administer the plan? What procedures would be incorporated to ensure that “Vigilant Century” provisions, if included in the NRP, help and do not inhibit the participation of responding agencies?
- National, regional, area and local teams have been established under the NCP and operate on an ongoing basis (responding hundreds of times a year) to ensure that the response to a release or spill of oil or hazardous substances is appropriate and efficient. Teams that respond to disasters under other plans, by comparison, do not operate on a continuing basis. Will the NRP require establishment of a response team structure similar to that used under the NCP? How will a new response team structure be established to reflect the objectives of all of the plans?

¹⁰ U.S. President George W. Bush, “Homeland Security Presidential Directive/HSPD-5,” Washington, Feb. 28, 2003.