

CRS Report for Congress

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The Emergency Management Assistance Compact (EMAC): An Overview

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Summary

The Emergency Management Assistance Compact (EMAC) is an agreement among member states to provide assistance after disasters overwhelm a state's capacity to manage consequences. The compact, initiated by the states and coordinated by the National Emergency Management Association, provides a structure for requesting emergency assistance from party states. EMAC also resolves some, but not all, potential legal and administrative obstacles that may hinder such assistance at the state level. EMAC also enhances state preparedness for terrorist attacks by ensuring the availability of resources for fast response and facilitating multi-state cooperation in training activities and preparedness exercises. Congress approved EMAC as an interstate compact in 1996 (P.L. 104-321). Legislation pending before Congress (S. 3721, H.R. 5316, H.R. 5351) would authorize funds for the administration of EMAC. This report will be updated as events warrant.

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

¹ For information on EMAC, see [<http://test.emacweb.org/?9>], visited Apr. 25, 2006. See also National Emergency Management Association, *Emergency Management Assistance Compact: Guidebook and Operating Procedures*, August 2000.

National Emergency Management Association (NEMA), a professional association of state emergency managers, administers the compact.²

Congressional Action. Congress approved EMAC through a joint resolution passed in 1996.³ Under the U.S. Constitution, Congress has the authority to approve interstate compacts.⁴ Since approval of the compact in 1996, the agreement has been the focus of little, if any, debate in Congress.

While it is a relatively recent innovation, antecedents for EMAC stretch back decades. The Federal Civil Defense Act of 1950 (CDA) authorized the Federal Civil Defense Administrator to “assist and encourage the states to negotiate and enter into interstate civil defense compacts” and undertake other actions that would “permit the furnishing of mutual aid for civil defense purposes in the event of an attack”⁵ After years of minimal funding, considerable opposition, and scant public support for civil defense activities, the CDA remained in the U.S. Code but had little effect or meaning. In light of concerns raised after Hurricane Andrew devastated south Florida in 1992, Congress incorporated many of the provisions of the CDA into Title VI, “Emergency Preparedness,” of the Robert T. Stafford Disaster Relief and Emergency Assistance Act in 1994 (the Stafford Act).⁶ Similar to the authority given in the CDA, Title VI of the Stafford Act authorizes the Director of the Federal Emergency Management Agency (FEMA) to “assist and encourage the states to negotiate and enter into interstate emergency preparedness compacts” and undertake other actions similar to those first enacted in 1950.⁷

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

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

³ P.L. 104-321, 110 Stat. 3877.

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

⁵ P.L. 81-920, 64 Stat. 1249.

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

⁷ 42 U.S.C. 5196(h).

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

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

State Actions. Many questions were raised about the capability of the federal and non-federal governments to manage the consequences of disasters after Hurricane Andrew destroyed much of the infrastructure in the areas around Miami, Florida. Then-Governor Lawton Chiles initiated discussions with other governors through the Southern Governors Association to develop a mutual aid agreement. These discussions concluded with agreement by 17 states, as well as the U.S. Virgin Islands and Puerto Rico, to adopt the *Southern Regional Emergency Management Compact* (SREMAC) in 1993.⁹ By 1995, the agreement included all states and territories that wished to participate. All of the states except California and Hawaii have ratified the EMAC provisions, generally by adopting them in statutes.¹⁰ In addition, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands have ratified EMAC.¹¹

EMAC is not the only interstate compact adopted by the states to speed assistance after disasters occur. As noted above, for decades Congress has authorized executive branch officials to negotiate civil defense compacts. Many state codes still retain these emergency preparedness and civil defense compacts.¹² In addition, a number of state legislatures have ratified other interstate compacts or agreements that expedite emergency assistance or military aid.¹³

⁹ For background on the development of the SREMAC and EMAC, see William Kevin Voit, *Interstate Compacts & Agencies 2003* (Lexington, KY: The Council of State Governments, 2003), p. 102.

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

¹¹ As noted above, Puerto Rico and the U.S. Virgin Islands were original signatory jurisdictions of the SREMAC. Two insular areas of the United States provide for mutual aid agreements, but are not participants of EMAC. If the government of Guam provides assistance outside the territory, the recipient state is to provide reimbursement pursuant to the applicable mutual aid agreement. See Guam Code Ann. Tit. 10 §65109. The governor of American Samoa is authorized to enter into an emergency assistance mutual aid compact with any state or U.S. possession, under specified conditions. See American Samoa code Ann. §26.0108.

¹² See *Interstate Compacts & Agencies 2003*, pp. 102-107.

¹³ Refer to the profiles of state emergency management and homeland security mutual aid provisions in the series of Congressional Research Service reports that are listed in the summary volume, CRS Report RL32287, *State Emergency Management and Homeland Security Statutory Provisions: A Summary*, by Keith Bea and Cheryl Runyon and Kae M. Warnock, consultants.

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

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

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

- confirming that the state has the resources to match the request for assistance;
- notifying the governor of the specific resources that have been requested and receiving the governor’s approval to deploy the resources; and,
- responding to the requesting state within two hours, specifying the extent to which the requesting assistance can be provided.¹⁴

Some resources are commonly found in states, such as mobile command vehicles, public assistance teams, and temporary shelters. Some specialized resources, such as cargo aircraft, donations management teams, and technical rescue teams, are found in relatively fewer states. EMAC provides emergency management directors a menu of specialized resources that may be called upon during a disaster, should the need arise.

EMAC does not require states to provide assistance when it is requested. A provision explains that assisting states “may withhold resources to the extent necessary to provide reasonable protection for such state.”¹⁵

Legal and Financial Aspects. One legal issue that EMAC is intended to resolve concerns liability protection. A person from one state who renders assistance in another and who holds a license, certificate, or other permit for professional, mechanical, or other skills, is considered under the EMAC provisions to be licensed, certified, or permitted to exercise those duties in the requesting state, subject to limitations or conditions set by the governor of the requesting state. Where officers or employees of one state render aid to another under EMAC, they are treated as agents of the requesting state for tort and

¹⁴ NEMA, *EMAC Guidebook*, pp. 56-57.

¹⁵ *Emergency Management Assistance Compact*, amended Jan. 31, 1995, Article IV.

immunity purposes. Neither the officers or employees of the state providing assistance, nor that state itself, would face liability for acts or omissions in good faith while rendering aid (including providing supplies and related equipment). Good faith in this context does not include willful misconduct, gross negligence, or recklessness.

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

Coordination with FEMA. When assistance is requested through EMAC, the requesting state typically designates an official in its Emergency Operations Center (EOC) to coordinate all out-of-state assistance, including assistance from other states and federal agencies. The compact is intended to ensure coordination with the Department of Homeland Security, generally through FEMA. In case of large multi-state disasters, an advance team comprised of state resources (also known as an A-Team) may be deployed to each affected state under the provisions of EMAC. When necessary, additional A-Teams are dispatched to FEMA headquarters, FEMA regional operations centers, and other locations. The A-Team's mission is to facilitate the coordination of EMAC resources and provide consolidated status reports on EMAC activities to officials in each affected state.¹⁶

Possible Issues for Congressional Consideration

- States have varying levels of capability to respond to catastrophic disasters. In general, investigations on the response to Hurricane Katrina concluded that EMAC-sponsored assistance worked well and expeditiously. However, some problems have been identified. A survey conducted by the National Emergency Management Association (NEMA) on EMAC deployments made in response to Hurricanes Katrina and Rita provides insights on the benefits and challenges encountered.¹⁷ According to the survey, half of these issues associated with EMAC deployments were not resolved. These, and other types of deficiencies, may complicate mutual aid efforts in the future. Members of Congress might elect to evaluate the means by which the availability of EMAC assistance is incorporated in the evaluation of state capabilities.
- The *National Response Plan* issued by DHS sets out the framework for coordination among federal and non-federal agencies. Federal response teams possess particular skills and resources associated with terrorist

¹⁶ NEMA, *EMAC Guidebook*, p. 61.

¹⁷ "EMAC Post-Deployment Survey Results," available at [<http://test.emacweb.org/?866>], visited Apr. 25, 2006. Hereafter cited as EMAC Survey Results.

attacks. EMAC is intended to facilitate fast deployment of specialized response units, such as hazardous materials teams, across state lines. Congress might elect to consider legislative changes to ensure that state and federal response teams operate efficiently and coordinate operations.

- Emergency management practices, procedures, and policies rely upon a complex array of intergovernmental actions that derive in part from state authorities.¹⁸ EMAC is arguably one of the more important instruments for intergovernmental aid. The survey of EMAC deployments made after Hurricanes Katrina and Rita indicated that education and training in EMAC procedures needs improvement.¹⁹ Federal policies provide significant direction and assistance in preparedness as well as response activities.²⁰ Members of Congress might elect to consider whether the statutory provisions that authorize federal preparedness assistance might be amended to ensure that federal preparedness assistance is linked to implementation of EMAC. Also, Members might consider a call for the federal government “to nurture EMAC capabilities” and provide “a steady and reliable funding source that is not now in place.”²¹ Accordingly, bills pending before Congress (S. 3721, H.R. 5351, and H.R. 5316) would all authorize funds for the administration of EMAC. The Senate bill would also allow funds to be used to improve the system, state coordination with federal agencies, and credentialing procedures.
- Members of Congress might elect to consider legislation that would expand mutual aid authority beyond that exercised in the Washington, DC, area. For example, Chapter 2 of Subtitle H (Section 5102 - 5105) of H.R. 10 (108th Congress), the “9/11 Recommendations Implementation Act,” would have authorized federal, state, and local representatives to negotiate agreements and would have established liability provisions commensurate with those held by the state in which the respondents are normally operational.

¹⁸ For a discussion of the federalist nature of emergency management policy see James Jay Carafano and Richard Weitz, “Learning from Disaster: The Role of Federalism and the Importance of Grassroots Response,” *Backgrounder*, The Heritage Foundation, March 21, 2006, available at [<http://www.heritage.org/Research/HomelandDefense/bg1923.cfm>], visited Apr. 25, 2006.

¹⁹ EMAC Survey Results.

²⁰ For a summary of federal assistance programs, see CRS Report RL32696, *Fiscal Year 2005 Homeland Security Grant Program: State Allocations and Issues for Congressional Oversight*, by Shawn Reese.

²¹ *2004 After-Action Report: Emergency Management Assistance Compact*, p. 13, available at [<http://www.emacweb.org/>], visited Apr. 25, 2006.