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WEAPONS OF MASS DESTRUCTION POSE A SERIOUS
THREAT TO U.S. CITIES:
HOW PREPARED ARE WE?

by

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Preface

My interest in this subject stems from a long standing belief in the capabilities and professionalism of the armed forces of the United States. I believe that our military has an increasingly important role to play in the domestic security and overall welfare of the nation. The Department of Defense's exemplary response to the urgent, yet non-traditional taskings in the "The Defense Against Weapons of Mass Destruction Act of 1996" is but one more example of the flexibility and versatility of this institution.

I'd like to acknowledge the assistance of the following: LTC Bill Stranko, Office of the Army General Counsel, and Mr. Ken Myers, Defense Legislative Assistant for Senator Lugar, for their insight into broad policy considerations regarding "The Weapons of Mass Destruction Act of 1996"; LTC Steve Andraschko and LTC Lewis Vandike, for their assistance in gaining research material on the Domestic Preparedness Program; and Dr. Dave Sorenson, Air War College faculty, for his encouragement and guidance on the conduct of this research.

Abstract

In light of the 20 March 1995 nerve gas attack on a Tokyo subway system, the United States re-examined its capabilities to respond to an incident involving the criminal/terrorist use of a WMD in one of our nation's cities. When domestic capabilities were found to be sorely lacking in this regard, congress enacted legislation, Title XIV of PL 104-201, "The Defense Against Weapons of Mass Destruction Act of 1996," (commonly referred to as the Nunn-Lugar-Domenici legislation) to enhance national preparedness. Subtitle A of this legislation, "Domestic Preparedness," tasks the Department of Defense with a significant role in developing and deploying domestic countermeasures against nuclear, chemical and biological weapons of mass destruction. Proposed research will identify current vulnerabilities and examine the military's role under Subtitle A. Central to this effort will be a critical analysis of DOD's responsibilities, from both a policy as well as operational perspective. Research objectives are twofold. First, critique the adequacy of the "Subtitle A" response to this threat. Second, determine what the implications are of the role assigned to the military.

Chapter 1

A Nation at Risk

The United States lacks adequate planning and countermeasures to address the threat of nuclear, radiological, biological and chemical terrorism...State and local emergency response personnel are not adequately prepared or trained...Exercises of the Federal, State, and local response to nuclear, radiological, biological, or chemical terrorism have revealed serious deficiencies in preparedness and severe problems of coordination ... Sharing of the expertise and capabilities of the Department of Defense can be a vital contribution to the development and deployment of countermeasure against nuclear, biological and chemical weapons of mass destruction.¹

—The Congress of the United States
“The Defense Against Weapons of Mass Destruction Act of 1996”

Congress was uncharacteristically open and candid in their findings that civil agencies were ill-prepared to handle domestic crises involving weapons of mass destruction. The legislative history of “The Defense Against Weapons of Mass Destruction Act of 1996,” referred to above, reflects great congressional concern over the inadequacies identified in civilian domestic response capabilities, and a sense of urgency in crafting legislation that would shore-up the gaping holes in our domestic security posture.² In this environment the Department of Defense was assigned a key role because of the prevailing view that, at least in the short term, it possessed unique capabilities that other agencies lacked.

How serious is the threat? As a nation, how did we get into this precarious position? What are the implications of this legislation for the Department of Defense and the

interagency process? And finally, does this legislation do enough to mitigate the immediate threat and prepare the nation to face what may be the most serious security threat of the 21st century?

What follows is an initial look at the nature of the threat, our domestic security posture, the domestic preparedness role assigned to the Department of Defense and the overall efficacy of the “The Defense Against Weapons of Mass Destruction Act of 1996.” The flow of the discussion is chronological. Chapter 2 is basically an assessment of our domestic preparedness posture in light of the existing threat. It is not intended to be comprehensive, merely sufficient to establish the basis for later discussions of the legislative response. Chapter 3 details the different components of the legislation and outlines the manner in which the Department of Defense is implementing assigned responsibilities. Chapter 4 critiques the effectiveness of the legislation by analyzing the interplay between the major issues which surfaced during initial implementation. Chapter 5 draws conclusions from the preceding discussions and, by inference, calls for a reexamination of the *interagency process*³ and a fresh look at the manner in which we plan for the national security challenges of the future.

Notes

¹ *National Defense Authorization Act* (Public Law 104-201, 104th Congress), Title XIV, “Defense Against Weapons of Mass Destruction,” Section 1401.

² Legislative History, *National Defense Authorization Act* (Public Law 104-201, House Conference Report No. 104-724, p. 818-819.

³ Some insight into the workings of the *interagency process* is important to the understanding of this research. In *Beyond the Water’s Edge* Donald Snow and Eugene Brown discuss the Cold War roots of this multi-institutional forum for vetting policy initiatives. Joint Pub 3-08, *Interagency Coordination During Joint Operation*, provides a detailed treatment of the interagency process as it applies to current military thought, noting: “Increased involvement of military forces in civil activity at home and abroad is matched, in part, by an increase in situations – primarily overseas – in which civil

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agencies face emerging post cold war factors and military threats not previously confronted...These organizations are drawn closer to military forces by necessity because their mission may fail without military support or protection... there is no overarching interagency doctrine that delineates or dictates the relationships and procedures governing all agencies, departments, and organizations in interagency operations” [Joint Pub 3-08, Vol. 1 Chapter 1, October 9, 1996, pp. I-4 & I-5].

Chapter 2

The Catalyst for Action

*The United States tends to deal with complex security problems episodically, waiting for crisis conditions to force its hand.*¹

—Robert H. Kupperman, *National Defense*

On March 20, 1995, passengers aboard five trains in the Tokyo subway system were suddenly overcome by a noxious smelling gas. As the trains continued to run, the foul smelling odor spread throughout the heart of the Tokyo subway system. The scene was one of confusion and mayhem. The city mobilized firefighters and health care professionals to handle the crisis. Subsequently identified as a terrorist attack, the incident resulted in twelve deaths and over 5,000 hospitalizations. Aum Shinrikyo, a cult group which preached Armageddon, was held responsible. Their weapon of choice was sarin gas, an extremely deadly nerve agent.

Thus was ushered in an inauspicious consequence of our new world order – an age in which individual terrorists, fanatics and criminals can threaten entire cities with a wide array of readily available chemical, biological and nuclear materials. In our 21st century national security terminology we collectively refer to these devices as “weapons of mass destruction (WMD).”²

The situation in Tokyo, however, could have been far worse. Had the delivery system for the sarin gas proved more effective and the response of emergency crews less

efficient, the death toll could have easily reached into the thousands. While experts differ in their analysis, most agree that if this incident had occurred in the United States, dozens, if not hundreds of police and firefighters would have been exposed to lethal levels of the nerve agent.³ In point of fact, cities in the United States have fared only marginally better in their ability to avoid such a fate. The bombings of the World Trade Center in New York and the Alfred P. Murrah Building in Oklahoma revealed the vulnerability of our public infrastructure to this type of destruction. Good fortune, rather than planning and preparedness, get much of the credit for avoiding even greater calamity. In the bombing of the World Trade Center it was the explosion itself that vaporized the cyanide included in the explosive device.⁴ In the case of the Alfred P. Murrah building the results would have been far more devastating had the bombers included in their truck any of a number of widely available toxic chemicals. And the idea of dispensing an aerosol contaminant into a subway system was certainly not new. It had already been tested and found to be an effective way of dispersing a contaminant in a major metropolitan area. Some 30 years earlier in the United States experimenters released “harmless bacteria” into the New York City subway system in order to simulate the effects of a cold war era biological attack.⁵

In retrospect, one could argue that recent terrorist incidents should not have come as a surprise. The use of biological and chemical agents dates back thousands of years. The ancient Athenians salted wells; in the middle ages adversaries catapulted plague infested corpses over fortress walls.⁶ In more recent times Iraq and Cambodia made widespread use of chemical agents. Domestic infrastructure facilities were not a new category of target either. For decades terrorist in other countries, to include France and the

Philippines, had targeted such facilities.⁷ What's new today, however, is the ability of a single individual or small group of individuals to create such widespread destruction.

Recent technological advances, the exponential growth in the ability of the average person to access information, and the sheer glut of nuclear, chemical and biological materials on the world market have come together to provide an unprecedented supply of destructive materials. At the same time rogue nations, and individual terrorists, criminals, and fanatics, are furnishing the demand. The result, according to Senators Sam Nunn and Richard Lugar, is one of the most serious security threats to face the nation in the post cold war era.⁸

The Threat

With this stark realization looming all too obvious on the horizon, the 104th Congress made a concentrated effort to address this issue. More than 2,000 pages of the congressional record were devoted to hearings on "The Global Proliferation of Weapons of Mass Destruction," with an equal amount of classified material appended to only the committee copy of the report.⁹ Of the published material, a significant portion focused on domestic vulnerabilities and the potential for a Tokyo-like incident in the United States. As it turned out, there was more to be feared from this group than anyone realized.

Aum Shinrikyo experimented with a wide array of WMD, not just sarin. In addition to the manufacture and use of sarin, the Aum Truth Cult had produced and employed phosgene, cyanide, anthrax, and botulism, and attempted to harvest Ebola from Africa and procure nuclear materials from Russia.¹⁰ And they were not alone in these efforts. In

recent years other groups, less successful and therefore less well known, had used botulism, ricin, sarin, bubonic plague, cyanide vx and possibly Ebola in their criminal and terrorist enterprises.¹¹ FBI files indicate the number of credible threats to use such weapons in the United States were but a handful in 1995, jumped to 20 by 1996, and doubled to more than 40 in 1997.¹² With more than 50 on-going investigations involving WMD threats, Robert Blitzer, head of the FBI's terrorism section, warns "... it's not a question of if it's going to happen, it's when."¹³ This is not altogether a surprising revelation. The protocols for producing biological and chemical weapons and the designs for nuclear weapons can be accessed over the Internet and more than 20 nations have active WMD development programs.¹⁴ The fact that several of these nations are well known sponsors of terrorist movements further fuels this volatile climate.

The course of the hearings reflected an acute awareness that the recent demise of the former Soviet Union -- with more than 30,000 nuclear weapons, hundreds of tons nuclear material, more than 40,000 tons of chemical weapons, advanced biological weapons, and thousands of disaffected and unemployed scientists -- resulted in a veritable smorgasbord for those shopping for WMD materials and technology. From the "poor man's nuke" to the actual warhead, police and intelligence agencies around the world were reporting unprecedented trafficking in chemical, biological and nuclear materials, including virtually every item in the former Soviet WMD inventory.¹⁵ The illicit market for nuclear materials was the most active.

The Center for Strategic and International Studies commented in a report last year on the increasing likelihood of nuclear material, or even a warhead, being pilfered from Russian stockpiles or those of the Former Soviet Union (FSU).¹⁶ Recent

Bundeskriminalblatt (the Bundeskriminalblatt, or BKA, is Germany's equivalent to our FBI) reports and those of the Nonproliferation Center paint a chilling picture of a crumbling Russian military industrial complex suffering the hemorrhage of significant quantities of nuclear materials.¹⁷ The Nonproliferation Center Report documented 45 nuclear smuggling incidents between November 1993 and October 1995, involving FSU and Eastern European countries.¹⁸ The BKA report, which defines nuclear crime more broadly, documents 267 cases in Germany in 1994 alone, with a 48% increase in cases of suspected trafficking in radioactive materials over the previous year.¹⁹ According to this report the materials being seized in these criminal enterprises in Germany originated almost exclusively in the FSU and Eastern European countries, and had street values per kilogram well into the millions of dollars.²⁰

Assessing our Domestic Security Posture

To understand congressional intent and truly appreciate the role assigned to the military under "The Defense Against Weapons of Mass Destruction Act of 1996" it's important to understand where the nation was in terms of domestic preparedness, prior to the Tokyo subway attack. While there certainly was a general lack of planning in this area, that's not the same as saying shortfalls had gone entirely unnoticed. By March of 1995 many domestic preparedness problems had been well documented by the nation's "crisis response" and "consequence management" systems.²¹ Strategists and emergency practitioners alike were already well aware of the potential for calamity. Robert Kupperman, from the Center for Strategic and International Studies, commented in January 1995 on the disreputable state of domestic preparedness. In noting that "the

federal government had essentially ignored the issue of domestic terrorism for years,” he went on to detail the respective problems of the responsible federal agencies.²²

Assessments of local government capabilities were also conducted in the aftermath of the Tokyo subway incident. Here too, the findings were particularly sobering. For example, a 1996 survey of 26 states conducted by the National Governors’ Association found individual communities sorely lacking in training, expertise, manpower, and equipment to handle a chemical or biological incident.²³ These findings were duplicated in September of 1996 when Federal Emergency Management Agency (FEMA) representatives met with emergency planners from Boston, Denver, Los Angeles and Philadelphia. Even in these large metropolitan areas officials concluded that local government capabilities to respond to a WMD terrorist incident were “nominal.”²⁴ “Chemical and biological incidents are simply not in the playbook of most fire departments,” commented the Executive Director of the International Association of Fire Chiefs in 1996.²⁵

Other system-wide problems had also been identified. During the time frame just prior to and immediately after the subway incident several domestic preparedness exercises were conducted in the United States in order to assess the nation’s collective ability to respond to a WMD incident. In this regard, MIRAGE GOLD was particularly instructional in its findings. MIRAGE GOLD was the final training event in a series designed to assess the capabilities of, and command and control relationships between, agencies responding to a nuclear terrorist incident in the United States. The exercise event was conducted in New Orleans, LA, in 1994, and involved selected federal agencies, including the Federal Emergency Management Agency, the Department of

Defense, the Department of Energy and the Federal Bureau of Investigation. Among other findings, the exercise highlighted significant command and control problems related to functional and hierarchical responsibilities. Communication and coordination between agencies responsible for “crisis response,” a function typically associated with law enforcement organizations, such as the FBI, and those responsible for “consequence management,” such as FEMA, were found to be characteristically poor. Communication and coordination between like organizations, which had different spheres of influence in the city-state-federal hierarchy, was also poor. By one account, the governor of Louisiana is reported to have become so frustrated with federal agencies, who would not share information with state agencies, that he complained to the President.²⁶ The result – “the flow of information regarding the overall incident and the current situation was almost nonexistent.”²⁷ Overall, the exercise found that state and federal agencies, to include the Department of Defense, did not fully understand one another’s responsibilities.”²⁸

A series of training events conducted after the signing of The Defense Against Weapons of Mass Destruction Act of 1996, but prior to implementation, validated the need for immediate legislative action. TERMINAL BREEZE, a tabletop exercise conducted in the Washington, DC area, was a benchmark event. Conducted in September 1996, it was designed to assess interagency capabilities to respond to a terrorist nerve agent attack on the metropolitan area subway system. The exercise results highlighted the fact that even in our nation’s capital “The community as a whole lacks the ability to respond to a terrorist incident with personnel who are trained and equipped to detect a weapons of mass destruction (WMD) threat.”²⁹ The findings hearken back to command

and control concerns previously identified and “the confusion that could potentially surface” from overlapping responsibilities.³⁰

Dubious exercise results, alarming intelligence reports on the proliferation of WMD, and a cascade of terrorist events had provided compelling incentive for the government to act. A wide array of federal agencies set to work conducting critical reviews of resources and capabilities. Comprehensive policy guidance soon followed. In addition to The Defense Against Weapons of Mass Destruction Act of (also referred to as the Nunn-Lugar-Domenici [NLD] legislation), Congress drafted the Antiterrorism Act of 1996 and the President issued Presidential Decision Directive 39, “U.S. Policy on Counterterrorism.” These documents collectively defined the requirements for improving national response capabilities. Numerous operational initiatives followed. The Senior Agency Coordination Group (SICG) was established at the federal level to facilitate the planning process and provide a forum for resolving interagency issues.³¹ The most immediate and significant impact of this initiative, to date, has been the improvement in integrated planning on the part of crisis responders and consequence managers. The FBI’s operational concept plan and FEMA’s Terrorism Incident Annex to the Federal Response Plan both reflect improvements in integrated planning.

Notes

¹ Robert H. Kupperman, “United States Becoming Target for Terror Forays,” *National Defense*, Jan 1995, p. 22.

² Title 18, *U.S. Code*, Section 2332a, “Use of Weapons of Mass Destruction,” provides a Legal Definition of WMD.

³ John Fialka, “U.S. Cities Prepare to Deal With Terror Attacks, But Drills Point to Weakness in Rescue Plan,” *The Wall Street Journal*, June 3, 1966, p. A16.

⁴ Chris Seiple, “Consequence Management: Domestic Response to Weapons of Mass Destruction,” *Parameters*, Vol. XXVII, No. 3, p. 119.

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⁵ Robert Harris and Jeremy Paxman, *A Higher Form of Killing* (New York: Hill and Wang, 1982), pp. 158-159.

⁶ Barry R. Schneider, "Defending Against Chemical and Biological Warfare Threats," AWC Readings for Future Conflict Studies, p. 286. Article was reprinted from

Chapter 5 of *Future War and Counterproliferation: U.S. Military Responses to NBC Proliferation Threats* (forthcoming book) by Barry Schneider.

⁷ Kupperman, "United States Becoming Target for Terror Forays," p. 22.

⁸ Lois Ember, "Senate Okays Chemical Antiterrorism Program," *Chemical & Engineering News*, July 8, 1996, Vol. 74, Issue 28, p. 7.

⁹ The actual committee record contained much more material than this, however significant portions were classified and available only to the committee.

¹⁰ David E. Kaplan and Andrew Marshall, *The Cult at the End of the World* (New York: Crown Publishers, 1996), pp. 93-252.

¹¹ Walter Laqueur, "Terrorism: Looking to the Future," *Current*, October 1996, Issue 386, p. 9.

¹² David E. Kaplan, "Terrorism's Next Move," *U.S. News & World Report*, November 17, 1997, Vol. 123, Number 19, p. 28.

¹³ *Ibid.*

¹⁴ Nonproliferation Center report "The Weapons Proliferation Threat," March 1995, p. 2, attached as exhibit number 3a to US Senate Permanent Committee on Investigations report on *The Global Proliferation of Weapons of Mass Destruction*, March, 1996, (Washington: US Government Printing Office, 1996), p. 486.

¹⁵ Sam Nunn, "The New Terror: Nutcakes With Nukes," *New Perspective Quarterly*, Winter, 96, Vol. 13, Issue 1, p. 32.

¹⁶ Kurt Kleiner, "Will Russia's Criminal Underground Go Nuclear?," *New Scientist*, 6 July 96, p. 10, citing a report from the Center for Strategic and International Studies.

¹⁷ Nonproliferation Center report "Chronology of Nuclear Smuggling Incident," 13 October 1995, pp. 1-5, attached as exhibit number 11 to US Senate Permanent Committee on Investigations report on *The Global Proliferation of Weapons of Mass Destruction*, March, 1996, (Washington: US Government Printing Office, 1996), pp. 712-716, and Bundeskriminalblatt report "Nuclear Crime – The Situation in the Federal Republic of Germany/Enforcement Aspects," pp. 6-9, attached as exhibit number 18 to US Senate Permanent Committee on Investigations report on *The Global Proliferation of Weapons of Mass Destruction*, March 1996, (Washington: US Government Printing Office, 1996), p. 799.

¹⁸ Nonproliferation Center report "Chronology of Nuclear Smuggling Incident," 13 October 1995, pp. 1-6.

¹⁹ Bundeskriminalblatt report "Nuclear Crime – The Situation in the Federal Republic of Germany/Enforcement Aspects," pp. 3-4.

²⁰ *Ibid.* p. 7, and "Report of Bavarian Office of Criminal Investigation on the Confiscation of Plutonium at the Munich Airport on 10 Aug 1994," 25 April 1995, p. 7, attached as exhibit number 20 to US Senate Permanent Committee on Investigations

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report on *The Global Proliferation of Weapons of Mass Destruction*, March 1996, (Washington: US Government Printing Office, 1996), p. 810.

²¹ Crisis Response involves measures to resolve a hostile situation and may include investigation and preparation of criminal case. The FBI is the lead agency for crisis response in domestic WMD incidents. Consequence Management involves measure to alleviate the damage, loss, hardship or suffering caused by an emergency. FEMA is the lead agency for consequence management in domestic WMD incidents.

²² Kupperman, "United States Becoming Target for Terror Forays," p. 22.

²³ Department of Defense, *Report to Congress*, "Domestic Preparedness Program in the Defense Against Weapons of Mass Destruction," May 1, 1997, p. 2.

²⁴ *Ibid.* p 6.

²⁵ Fialka, "U.S. Cities Prepare to Deal With Terror Attacks, But Drills Point to Weakness in Rescue Plan," p. A16.

²⁶ Andrew Cockburn and Leslie Cockburn, *One Point Safe* (New York: Doubleday, 1997), p. 88.

²⁷ Federal Emergency Management Agency, "Exercise MIRAGE GOLD After Action Report," March 1995, p. 9.

²⁸ *Ibid.*, p. iii.

²⁹ Department of Defense, "Surgeon General of the Army and Director of Military Support After Action Report: Exercise TERMINAL BREEZE 1996," October 8, 1996, p. B-2.

³⁰ *Ibid.*, p. B-6.

³¹ The SICG is staffed by senior leaders of federal agencies and establishes overall policy in regards to domestic preparedness. The SICG has provided an interagency forum for development of strategic direction for DoD's Domestic Preparedness Program.

Chapter 3

The Weapons of Mass Destruction Act of 1996

*The United States government is only marginally prepared to deal with one major terrorist incident, let alone a cascading sequence of events. This raises the possibility of real threats to the Continuity of Government in the face of coordinated terrorist attacks...The inability to respond to a serious terrorist incident would be compounded if that event involved weapons of mass destruction... we need to ensure that the Congress and the Executive branch thoroughly understand the nature of this threat and the options available to them as well as the opportunity costs in failing to take appropriate action.*¹

—Robert H. Kupperman,
Letter to Senator Sam Nunn
November 15, 1995

Legislators were acutely aware of just how far behind the nation was when they drafted the *domestic provisions* of “The Defense Against Weapons of Mass Destruction Act of 1996,” hereafter referred to collectively as **Subtitle-A**. In addition to the hearings held throughout 1995 and the first half of 1996, in July 1996 an interagency group led by FEMA had forwarded to the President a report titled “Consequence Management for Nuclear, Biological, and Chemical (NBC) Terrorism.” This report documented the inadequacy of the *Federal Response Plan* to deal with WMD incidents.² The results of this report explain, in part, why the Secretary of Defense was assigned wide-ranging responsibilities under Subtitle-A and a “lead official” role for domestic preparedness. In this capacity DoD was tasked with developing and deploying domestic countermeasures

against nuclear, chemical and biological weapons of mass destruction. Simultaneously, Subtitle-A tasked the executive branch with improving the capabilities of other federal agencies to respond to WMD crises in order to reduce reliance on the Department of Defense. The legislation allows the President to designate another agency of the federal government as the “lead official” for domestic preparedness on or after October 1, 1999. The responsibilities assigned to DoD, while not unprecedented in terms of individual functions, employ the military in a wide variety of non-traditional roles and call for a significant commitment of Defense resources.

Department Of Defense Responsibilities

Operating within an interagency approach that is both familiar and comfortable, the Department of Defense developed a Domestic Preparedness Program that incorporates all nine supporting programs outlined in Subtitle-A. These programs focus the predominant effort on Congress’ specific guidance to enhance the abilities of state and local communities to manage terrorist incidents involving weapons of mass destruction. DoD was specifically tasked to³:

- Establish a program which would provide **training** to Federal, state and local agencies “... regarding responses to a use or threatened use of a weapon of mass destruction or related materials.”
- Develop and execute an **exercise program** for “testing and improving the responses of Federal, state, and local agencies to emergencies” involving biological and chemical weapons.
- Establish a “**hotline**” -- “a designated telephone link to a designated source of data and expert advice for the use of state or local officials responding to emergencies involving WMD or related materials.”

- **Loan “appropriate equipment”** in accordance with otherwise established procedures.
- Assist the Secretary of Health and Human Services in the establishment of **“Metropolitan Medical Strike Force Teams.”**
- Develop and maintain “at least one domestic terrorism **rapid response team** ... capable of aiding Federal, state and local officials in the detection, neutralization, containment, dismantlement, and disposal of weapons of mass destruction...”
- **Assist law enforcement** officials in emergency situations involving chemical or biological weapons of mass destruction and in conjunction with the Attorney General “jointly prescribe regulations concerning the types of assistance which may be provided.”
- Develop and maintain “an **inventory** of physical equipment and assets ... that could be made available to aid state and local officials in search and rescue and other disaster management and mitigation efforts associated with an emergency involving weapons of mass destruction.”
- Assist the Federal Emergency Management Agency with preparing “a **database** on chemical and biological agents and munitions characteristics and safety precaution for civilian use.”

Executing the Provisions of Subtitle-A

The mechanism being used by the Secretary of Defense to provide the support mandated by Subtitle-A combines oversight from various elements of the DoD secretariat with a time-tested Department of the Army model for providing military support to civil authorities.⁴ The Assistant Secretary of Defense (Special Operations/Low Intensity Conflict) *ASD(SO/LIC)* provides the resource and policy oversight for the Domestic Preparedness Program. The Assistant to the Secretary of Defense (Nuclear Chemical and Biological Defense Programs) *ATSD(NCB)* provides oversight for equipment procurement. The Secretary of Defense is utilizing the Secretary of the Army as the Executive Agent for the Domestic Preparedness Program.⁵ In this capacity the Secretary

of the Army acts for the Secretary of Defense in the actual planning and execution of the Subtitle-A responsibilities.

The organizational framework being used by the Army to execute the provisions of Subtitle-A is essentially the same as that used to provide support to the Federal Emergency Management Agency in Florida in the aftermath of Hurricane Andrew and to the Department of Justice during the Los Angeles riots. The model relies on a small core-component of Army officers and part time representatives from the other services. This austere joint staff performs in an economy of force role and is heavily augmented during time of crisis. The day-to-day activities of the staff are supervised by the Director of Military Support, or *DOMS*. The *DOMS* is the Action Agent for the Secretary of the Army. The Action Agent functions at the operator level and writes the plans and orders.

The Chemical and Biological Defense Command *CBDCOM*, a two-star subordinate command of the Army Material Command, provides the Program Director for the Domestic Preparedness Program. *CBDCOM* is making extensive use of contractors and is “out-sourcing” many elements of the program. The specific manner in which DoD is executing the provisions of the Domestic Preparedness Program is described below. The provisions may be cross referenced to the legislation by the boldfaced key words which lead off each section.

Training. Focus group meetings with first responders were used as the basis for developing a training program that emphasizes detection, monitoring, protection, and decontamination. It begins with a city visit by a DoD-led interagency assessment team. The team meets with city emergency planners and allows them to tailor the training program to the needs of the particular community. The program includes “distant

learning” and “sustainment” imperatives. Assessment visits were conducted to 28 metropolitan areas in fiscal year 1997. The original goal of this program was to complete training in 120 major metropolitan areas by the end of FY 1999. Experience in the first several cities led to a revision of this goal. The current goal is to train emergency response personnel in 120 cities prior to the end of FY 2002.⁶

Exercises. DoD is developing a five-year interagency exercise program that focuses on assessing state and local response capabilities. The exercise program takes a crawl-walk-run approach to preparedness and starts with tabletop exercises which build on the initial assessment and training program. The first event in the exercise series for individual cities is conducted immediately following the initial training. Sustainment exercises will be integrated into the NSC’s National Counterterrorism Exercise Program and FEMA’s National Exercise Schedule.

Hotline/Helpline. The “hotline/helpline” is a mechanism for providing local emergency workers with expert advice when responding to emergencies involving WMD or related materials. Established by a telephone link from the Coast Guard’s National Response Center in Washington, DC, to CBDCOM’s emergency operations center, the help desk is manned 24 hours a day, seven days a week by trained chemical and biological experts.⁷ Access to emergency information involving nuclear material is available on a 24 hour a day basis through the Department of Energy’s emergency operations center.

Equipment Loans. DoD has statutory authority to loan equipment to local, state, and federal agencies and has routinely made use of this flexibility during time of domestic

crisis. The procedures for requesting such loans are outlined in DOD Directive 3025.15, Military Assistance to Civil Authorities (MACA).

Metropolitan Medical Strike Teams (MMST). A MMST is a “Highly trained, readily deployable, and fully equipped local response team organized and equipped to address WMD effects on human health.”⁸ MMSTs involve a system approach to this unique area of health care. Specialized training and equipping of care providers will provide them the capability to decontaminate, treat, and safely transport the victims of a biological or chemical attack. DoD is assisting the Department of Health and Human Services in the planning and development of a complete MMST system, beginning with 27 major metropolitan areas. The training and equipping time for a team is between six and twelve months.

Rapid Response Team. DoD has established the command and control structure to administer two Response Task Forces (RTFs) for use during consequence management. The headquarters elements of these RTFs are assigned to First and Fifth Army. They would be subordinate to the US Atlantic Command during actual operations and function under the direction of the Executive Agent. The force package assigned to these RTFs would be tailored to the crisis at hand, but could include units capable of supporting a response to a nuclear, chemical, or biological incident. Among the units available are the Marine Corps’ Chemical/ Biological Incident Response Force, the Army’s Technical Escort Unit and Medical Research and Material Command elements, and the Navy’s Medical Research Institute. These forces could also be assigned to support a Joint Special Operations Task Force, should the need arise.

Law Enforcement Assistance. The military's authority to assist civil law enforcement by providing equipment, facilities, training, and expert advice is well established by statute.⁹ The Department of Defense and the Department of Justice continue to develop mandated regulatory guidance which will facilitate coordination in those circumstances where technical assistance is requested by the Attorney General in emergencies involving WMD. The use of the military in what would otherwise be viewed as traditionally civilian police functions is prohibited, with narrow exceptions, by the provisions of the Posse Comitatus Act.¹⁰ A WMD emergency could provide a basis for one of these exceptions.¹¹

Inventory/Database. DoD is assisting FEMA in compiling a database which will reflect: (1) an inventory of federal assets that could be made available during a WMD crisis, (2) a listing of equipment that is considered surplus to federal agencies and could be made available to state or local agencies for training or crisis response, (3) and information on known chemical and biological agents including protection, detection, decontamination, toxicology, medical treatment, and hazard mitigation.¹² Access to these databases will be available in December 1997; a classified database is also being developed.¹³

Notes

¹ Robert H. Kupperman, to Sam Nunn, November 15, 1995, copy attached as exhibit number 18 to US Senate Permanent Committee on Investigations report on *The Global Proliferation of Weapons of Mass Destruction*, March 27, 1996, (Washington: US Government Printing Office, 1996), pp. 231-232.

² Legislative History, *National Defense Authorization Act*, p. 3325.

³ *National Defense Authorization Act* (Public Law 104-201, 104th Congress), Title XIV, "Defense Against Weapons of Mass Destruction, Subtitle-A, "Domestic Preparedness."

Notes

⁴ Department of Defense Report to Congress, “Domestic Preparedness Program in the Defense Against Weapons of mass Destruction,” May 1, 1997, p. 12.

⁵ As Executive Agent for the Secretary of Defense, the Secretary of the Army has been delegated the authority to act for the Secretary of Defense in matters related to support to civil authorities in consequence management.

⁶ Interagency Working Group on Weapons of Mass Destruction Terrorism, “Strategic Plan For Developing a Weapons of Mass Destruction Domestic Terrorism Preparedness and Response Capability,” August 29, 1997, pp. 2-4.

⁷ The National Response Center, located in Washington, DC, is an agency of the United States Coast Guard. Operating on a 24 hour a day basis, it orchestrates federal agency responses to myriad emergencies based on an extensive matrix/protocol system.

⁸ Department of Defense Report to Congress, May 1, 1997, pp. 17-18.

⁹ Title 10 U. S. Code, Section 372, authorizes the Secretary of Defense to “make available any equipment (including supplies and spare parts) base facility, or research facility of the Department of Defense to any Federal, State, or local civilian law enforcement official for law enforcement purposes.” Section 373 authorizes the Secretary of Defense to make DoD personnel available to train law enforcement officials and to operate and maintain equipment loaned to law enforcement officials under section 372.

¹⁰ Title 18 U. S. Code, Section 1385 constitutes a general prohibition against the use of the Army or Air Force in domestic civilian law enforcement activities. It does not generally prohibit the military from providing advice or indirect support to law enforcement.

¹¹ Title 18 U. S. Code, Section 831, “Prohibited Transactions Involving Nuclear Materials,” defines a narrow exception to the Posse Comitatus Act involving nuclear material when “enforcement of the law would be seriously impaired if the assistance were not provided and civilian law enforcement personnel are not capable of enforcing the law.” There are a handful of additional, narrowly defined exceptions to the Posse Comitatus Act.

¹² Interagency Working Group on Weapons of Mass Destruction Terrorism, p. 5-8.

¹³ *Ibid.*, p. 5-9.

Chapter 4

Implications and Observations

*It was not our intent to create this thing ... we did not want a massive entitlements program for counterterrorism.*¹

—John Sopko
Deputy Chief Counsel to Senator Nunn
(at the time Subtitle-A was drafted)

In the short time since Subtitle-A was enacted the Department of Defense has made great strides in organizing the national effort to improve domestic preparedness to deal with a WMD incident. As the lead agency for developing an enhanced response capability, DoD sponsored numerous interagency forums for improving federal, state, and local coordination; played a prominent role in the initiation of all nine domestic preparedness programs outlined in the legislation; and was the driving force behind the development of the “Interagency Strategic Plan” to see the action through. In integrating the efforts of a wide array of organizations across the crisis response/consequence management spectrum, DoD assisted in identifying a host of interagency issues related to *funding, interoperability, and leadership*. Not surprising, the successes and failures of the entire WMD domestic preparedness effort, to date, can be critiqued within this framework.

Funding

While both DoD's May 1997 "Report to Congress" and the August 1997 "Interagency Strategic Plan" make it clear that continued success in executing domestic preparedness programs is contingent upon adequate funding, it's equally clear that this issue is far from being resolved. Funding issues continue to have a complex, multi-dimensional impact on the execution of this legislation. At the most basic level they're tied to interoperability. Comments in the "Interagency Strategic Plan" illustrate the relationship. Since "current legislation [Subtitle-A] does not authorize or fund State and local equipment requirements ..., [first responders lack the proper] equipment, standardization and interoperability necessary to respond in a safe, timely, and effective manner."² This finding was validated in recent exercise results and has long term implications for equipment modernization and replacement.

At the macro level the funding issue takes on an entirely different twist. Here the uncertainty over future resources, and by extension the future "lead official," may have a more direct operational impact. As noted in the "Interagency Strategic Plan," "...uninterrupted leadership by an appropriate agency, adequately funded to achieve the intent of the legislation, is critical...an unintended consequence of this lead agency uncertainty will be a potential loss of momentum as the determination of the future lead is anticipated."³ The issue boils down to this: though the Department of Defense is currently the lead agency in national efforts to remedy domestic preparedness shortfalls, Subtitle-A allows the President to choose another agency to assume this role after FY 1999. DoD, for its part, has been clear in its desire to relinquish the lead. In fact, in its May 1, 1997, "Report to Congress" on the progress of domestic preparedness initiatives

there were no fewer than three separate notations to the effect that “After FY 1999, DoD will no longer fund [the majority of domestic preparedness programs]... since we plan to transfer these responsibilities to another agency.”⁴ The question now is, what agency will assume this mission? Most officials would contend the lead should logically be transferred to the Federal Emergency Management Agency. But, presumably, FEMA is equally concerned that future budgets may not keep pace with a potential growth in responsibilities. What now? The “Interagency Strategic Plan” recommends the President pre-select the new lead official in order to “assure uninterrupted progress.”⁵ That would seem a prudent measure. But it doesn’t address long term funding concerns, nor does it satisfy those who contend that Subtitle-A has spawned a “massive counterterrorism entitlement program.”⁶

While not specifically singling out DoD when commenting that “programs have grown so quickly that coordination and oversight have yet to catch up,” these critics are quick to point out that DoD has been the largest single recipient of the funding windfall that accompanied this legislation.⁷ And they may have a point. With a military reeling from painful cuts mandated by the Quadrennial Defense Review and potentially billions of dollars up for grabs, some services and components have already put in their bid for funding. The Marine Corps’ Chemical/Biological Incident Response Force is slated to receive 10 million dollars in FY 98 for equipment upgrades; meanwhile, the National Guard can count on an additional 10 million in FY 98 for “detailed planning and concept studies to support a comprehensive effort to expand the National Guard mission into the area of chemical/biological domestic defense.”⁸ All toll, congress recommended an increase of over 107 million dollars in the FY 98 defense budget for “various high

priority research and development, procurement, and study requirements” involving WMD.⁹

So, who monitors the overall federal government program and its expenditures? David Kaplan, the co-author of the book describing the Tokyo subway attack, offers insight in a recent article on the subject. He quotes a former CIA director as saying “The system [to deal with terrorism and weapons of mass destruction] is not well organized at all.”¹⁰ The response elicited from the Office of Management and Budget regarding overall spending – “It’s not something we have a hard number for” – was no more encouraging.¹¹

Interoperability

As aptly noted in comments from WMD exercises and training events, the problem with agency interoperability goes far beyond the equipment standardization issue. There are obviously functional and hierarchical interests at stake. While much has been done to assuage the hierarchical friction between local, state, and federal agencies, there remain very real concerns regarding functional interface. Put simply, the *crisis responders* don’t always communicate effectively with the *consequence managers*, and vice versa.

Generally speaking, crisis response is law enforcement oriented; consequence management is relief oriented. The Federal Bureau of Investigation has primary responsibility for crisis response. Its concern is the investigative process, to include prevention of the terrorist/criminal act, resolution of the immediate incident, preservation of evidence, and presentation of a prosecutable case. The Federal Emergency Management Agency is the primary agency responsible for consequence management. Its

mandate, on the other hand, is entirely different from the FBI's. FEMA plans for and, if necessary, coordinates measures to alleviate damage, loss, hardship or suffering. Federal policy, which tends to compartmentalize responsibilities along a linear continuum, tends to exaggerate the distinction between these two approaches rather minimizing it. Interagency planners are aware of this problem and continue to devote considerable energy to ensuring a seamless integrated response system. Intra-agency planners in DoD may not be as circumspect.

The smooth coordination and integration of crisis response and consequence management functions, a concern well documented at the federal interagency level, has not always been clearly understood within the Department of Defense. In fact, the interagency rubs at the national level have occasionally had a counterpart at the Joint Staff/DOMS staff level. The reason for this can be found in the bifurcated structure which exists within the Department of Defense for handling crisis response and consequence management. Within DoD the Chairman of the Joints Chiefs, supported by the Joint Staff, assists the Secretary of Defense with crisis response. The Secretary of the Army, assisted by the DOMS staff, assists the Secretary of Defense with consequence management.¹² While this arrangement has historically proved successful, it has not been without misunderstandings. Military planners, current and past, quietly echo this sentiment. The point was underscored by the Deputy Fifth Army Commander in the 1994 After Action Report on MIRAGE GOLD. The Report indicates "Current DoD command and control arrangements involve the Joint Staff [supporting the Chairman]...and the Director of Military Support acting on behalf of the Secretary of the Army... The chains

of command from these organizations run parallel, with a high potential for conflicting operational guidance.”¹³

Similar concerns have been evident in other domestic support operations and have been the subject of several internal Department of Defense reviews. Whether these efforts and those at the interagency level have been successful in resolving the *crisis response/consequence management* enigma remains to be seen. What is certain, however, is that a domestic terrorist incident involving a WMD has the potential to stress the preparedness and response capabilities of this nation in ways heretofore unimaginable. The resources and coordination required could easily surpass any previous effort by several orders of magnitude. If there is a crack in the system, this is when it will show.

Leadership

A final word on “leadership” relates specifically to the impact of this legislation on the military. Subtitle-A casts the Department of Defense in a role that is more comprehensive and potentially more resource intensive than the typical domestic support mission. In addition, the responsibilities assigned do not entirely lend themselves to integration into the existing Military Assistance to Civil Authorities (MACA)/Federal Response Plan (FRP) models. These models typically assign the military to a role in support of another lead federal agency.¹⁴ This legislation, on the other hand, designates the Secretary of Defense as the “lead official” for providing training and expert advice to civilian “first responders” through 1999, and assigns DoD significant additional program responsibilities for exercises, hotline inquiries, and medical response. While the military

has occasionally been cast in more demanding domestic roles, the circumstances have been rare and have been typically short term initiatives.

Congress was aware of the contradictions this legislation created for the Department of Defense, but was forced to balance this concern against the critical domestic security needs of the nation. This ambivalence resulted in the “sunset” provisions of Subtitle-A which allow the President to ultimately decide, at the end of fiscal year 1999, what agency of the federal government will be responsible for domestic preparedness. This is not an inconsequential decision for DoD.

Permanently assigning the Department of Defense with the Subtitle-A domestic preparedness mission would have significant implications in terms of both policy and resources. Turning first to resourcing concerns, the long term assignment of these responsibilities would elevate domestic support requirements from the realm of the “be prepared mission,” to a full time responsibility. No longer a domestic contingency operation, this would require a different management approach from military planners. The economy of force staffing approach used to support domestic operations, in which an austere staff maintains plans for a multitude of domestic support missions and is augmented during execution, would require significant modification.

More important, however, would be the need to reexamine the existing *military support to civil authorities* paradigm. The “lead agency” responsibilities that go along with the domestic preparedness program make it qualitatively different from other missions in which DoD is a supporting agency. Arguably, it would require military planners to work within a different model when defining their relationships in the interagency process. To some extent this would be unplowed ground. Much of the

military's experience in the interagency process, both domestic and international, has been one in which DoD has artfully crafted a support model which allowed them to lead from the rear. Tradition, policy, and sometimes law, often required this approach be utilized. Divergence from this model will break a glass ceiling and may have significant implications for how national security policy is executed.

Notes

¹ David E. Kaplan, "Everyone Gets Into the Terrorism Game," *U.S. News and World Report*, November 17, 1997, Vol. 121, Number 19, p. 32.

² Strategic Plan, p. 5-7.

³ Strategic Plan, p. 6-1.

⁴ Department of Defense Report to Congress, May 1, 1997, p. 13.

⁵ Strategic Plan, p. 6-3.

⁶ Kaplan, "Everyone Gets Into the Terrorism Game," p. 32.

⁷ Ibid.

⁸ Congress, House, *Department of Defense Appropriations Bill, 1998*, 105th Congress, 1st Session, H.R.105-206/Associated Bill 2266, [on line] <http://thomas.loc.gov/cgi-bin/cpquery/1?cp105:/temp/~cp105YeNm:e124091>., Internet; accessed 12 Dec 97.

⁹ Ibid.

¹⁰ Kaplan, "Everyone Gets Into the Terrorism Game," p. 32.

¹¹ Ibid.

¹² In this capacity the DOMS staff functions as a miniature joint staff in the manner in which it plans and executes domestic support operations. The DOMS' staff is responsible for myriad domestic support programs to include disaster relief, wildland fire fighting, civil disturbance operations, immigration emergencies, postal disruptions, animal disease eradication, military assistance to safety and traffic, special events, and critical asset assurance.

¹³ MG Joseph W. Kinzer, to Commanding General, FORSCOM, "Exercise MIRAGE GOLD After Action Report," November 14, 1994, copy attached as exhibit number 14 to US Senate Permanent Committee on Investigations report on *The Global Proliferation of Weapons of Mass Destruction*, March 27, 1996, (Washington: US Government Printing Office, 1996), pp. 227-230.

¹⁴ Military support in domestic disasters and civil emergencies is provided to a designated "lead Federal agency" in accordance with approved interagency plans and agreed upon policy. In disaster relief the lead federal agency is FEMA. For wildfire support the lead agency may be either the Department of Agriculture or the Department of the Interior. DoD supports the Department of Justice when performing civil disturbance operations. These programs have been very effective in providing quality military

Notes

support to civilian agencies, especially in recent years. Director of Military Support Information Paper, Military Support to Civil Authorities (MSCA), Mar 21, 1996.

Chapter 5

Conclusions

As such fundamental concepts as war, crime, and terrorism converge, and as traditionally distinct domestic and international issues blur together, U.S. planners will need to rethink the national security structure and interagency process... They are not well suited for today's world.¹

—Russell E. Travers
Defense Intelligence Agency Analyst, 1997

The initial flurry of legislative activity has waned in the aftermath of the scare that followed the Tokyo subway incident. Congress passed “The Defense Against Weapons of Mass Destruction Act of 1996” and a Department of Defense led interagency group is executing the substantive provisions mandated by the Domestic Preparedness Program. Is the state of domestic preparedness any better now than it was in March of 1995?

There have been improvements in interagency coordination at the federal level, and interagency training and assessment teams have visited a handful of cities. Awareness of the problem has grown enormously. But, an objective look at overall domestic preparedness efforts indicates the program may already be losing momentum. The training of *first responders* will not be completed now until 2002 and the equipment needs of those most likely to face this threat have not been adequately addressed. Uncertainties over future leadership and funding are hindering operational efforts at a

time when the nation should be redoubling its determination to enhance domestic preparedness capabilities.

While there's ambiguity in the present course of action, the future seems quite certain. After all, the threat hasn't diminished, only the rhetoric has. Technology, access, and availability continue to leverage the global supply of WMD. Experts agree the terrorist/criminal use of a nuclear, chemical or biological weapon in the United States is only a matter of time.

What should the nation be doing now? First, settle the immediate leadership issue. Designate what agency will have the long term responsibility for the domestic preparedness program, guarantee out-year funding support to that agency, and then objectively assess the effectiveness of the system put into place. But choose carefully when deciding which agency should lead. The original decision to assign the Department of Defense the responsibility to lead efforts to enhance domestic preparedness was prompted by a crisis. The need to shore-up gaping holes in the nation's domestic preparedness was so critical, functionally unique, and time sensitive that it warranted an immediate wide-ranging, integrated, and resource intensive response. Unfortunately, this situation is far from being remedied. The job is not done, nor will it be done by the end of Fiscal year 1999.

Finally, examine the wider implications of Subtitle-A and the efficacy of the interagency process in light of present and future national security concerns. While outside the scope of this discussion, a compelling argument can be made that the interagency issues that surfaced while implementing the domestic preparedness program

– leadership, funding, and interoperability – are in many ways predictive of the national security challenges facing our nation. If so, change is already overdue.

Notes

¹ Russell E. Travers, “A New Millennium and a Strategic Breathing Space,” *The Washington Quarterly*, Spring 1997, Vol. 20, No. 2, p. 98.

Appendix A

Title XIV—Defense

Defense Against Weapons of Mass Destruction Act of 1996¹

Subtitle A--Domestic Preparedness

- Sec. 1411. Response to threats of terrorist use of weapons of mass destruction.
- Sec. 1412. Emergency response assistance program.
- Sec. 1413. Nuclear, chemical, and biological emergency response.
- Sec. 1414. Chemical-biological emergency response team.
- Sec. 1415. Testing of preparedness for emergencies involving nuclear, radiological, chemical, and biological weapons.
- Sec. 1416. Military assistance to civilian law enforcement officials in emergency situations involving biological or chemical weapons.
- Sec. 1417. Rapid response information system.

SEC. 1411. RESPONSE TO THREATS OF TERRORIST USE OF WEAPONS OF MASS DESTRUCTION.

(a) Enhanced Response Capability.— In light of the potential for terrorist use of weapons of mass destruction against the United States, the President shall take immediate action—

(1) to enhance the capability of the Federal Government to prevent and respond to terrorist incidents involving weapons of mass destruction; and

(2) to provide enhanced support to improve the capabilities of State and local emergency response agencies to prevent and respond to such incidents at both the national and the local level.

(b) Report Required.— Not later than January 31, 1997, the President shall transmit to Congress a report containing –

(1) an assessment of the capabilities of the Federal Government to prevent and respond to terrorist incidents involving weapons of mass destruction and to support State and local prevention and response efforts;

(2) requirements for improvements in those capabilities; and

(3) the measures that should be taken to achieve such improvements, including additional resources and legislative authorities that would be required.

SEC. 1412. EMERGENCY RESPONSE ASSISTANCE PROGRAM.

(a) Program Required.—

(1) The Secretary of Defense shall carry out a program to provide civilian personnel of Federal, State, and local agencies with training and expert advice regarding emergency responses to a use or threatened use of a weapon of mass destruction or related materials.

(2) The President may designate the head of an agency other than the Department of Defense to assume the responsibility for carrying out the program on or after October 1, 1999, and relieve the Secretary of Defense of that responsibility upon the assumption of the responsibility by the designated official.

(3) In this section, the official responsible for carrying out the program is referred to as the “lead official.”

(b) Coordination.— In carrying out the program, the lead official shall coordinate with each of the following officials who is not serving as the lead official:

(1) The Director of the Federal Emergency Management Agency.

(2) The Secretary of Energy.

(3) The Secretary of Defense.

(4) The heads of any other Federal, State, and local government agencies that have an expertise or responsibilities relevant to emergency responses described in subsection (a)(1).

(c) Eligible Participants. — The civilian personnel eligible to receive assistance under the program are civilian personnel of Federal, State, and local agencies who have emergency preparedness responsibilities.

(d) Involvement of Other Federal Agencies.—

(1) The lead official may use personnel and capabilities of Federal agencies outside the agency of the lead official to provide training and expert advice under the program.

(2)(A) Personnel used under paragraph (1) shall be personnel who have special skills relevant to the particular assistance that the personnel are to provide.

(B) Capabilities used under paragraph (1) shall be capabilities that are especially relevant to the particular assistance for which the capabilities are used.

(3) If the lead official is not the Secretary of Defense, and requests assistance from the Department of Defense that, in the judgment of the Secretary of Defense would affect military readiness or adversely affect national security, the Secretary of Defense may appeal the request for Department of Defense assistance by the lead official to the President.

(e) Available Assistance.— Assistance available under this program shall include the following:

- (1) Training in the use, operation, and maintenance of equipment for—
 - (A) detecting a chemical or biological agent or nuclear radiation;
 - (B) monitoring the presence of such an agent or radiation;
 - (C) protecting emergency personnel and the public; and
 - (D) decontamination.

(2) Establishment of a designated telephonic link (commonly referred to as a “hot line”) to a designated source of relevant data and expert advice for the use of State or local officials responding to emergencies involving a weapon of mass destruction or related materials.

(3) Use of the National Guard and other reserve components for purposes authorized under this section that are specified by the lead official (with the concurrence of the Secretary of Defense if the Secretary is not the lead official).

(4) Loan of appropriate equipment.

(f) Limitations on Department of Defense Assistance to Law Enforcement Agencies.— Assistance provided by the Department of Defense to law enforcement agencies under this section shall be provided under the authority of, and subject to the restrictions provided in, chapter 18 of title 10, United States Code.

(g) Administration of Department of Defense Assistance.— The Secretary of Defense shall designate an official within the Department of Defense to serve as the executive agent of the Secretary for the coordination of the provision of Department of Defense assistance under this section.

(h) Funding.—

(1) Of the total amount authorized to be appropriated under section 301, \$35,000,000 is available for the program required under this section.

(2) Of the amount available for the program pursuant to paragraph (1), \$10,500,000 is available for use by the Secretary of Defense to assist the Secretary of Health and Human Services in the establishment of metropolitan emergency medical response teams (commonly referred to as “Metropolitan Medical Strike Force Teams”) to provide medical services that are necessary or potentially necessary by reason of a use or threatened use of a weapon of mass destruction.

(3) The amount available for the program under paragraph (1) is in addition to any other amounts authorized to be appropriated for the program under section 301.

SEC. 1413. NUCLEAR, CHEMICAL, AND BIOLOGICAL EMERGENCY RESPONSE.

(a) Department of Defense—The Secretary of Defense shall designate an official within the Department of Defense as the executive agent for—

(1) the coordination of Department of Defense assistance to Federal, State, and local officials in responding to threats involving biological or chemical weapons or related materials or technologies, including assistance in identifying, neutralizing, dismantling, and disposing of biological and chemical weapons and related materials and technologies; and

(2) the coordination of Department of Defense assistance to the Department of Energy in carrying out that department's responsibilities under subsection (b).

(b) Department of Energy. — The Secretary of Energy shall designate an official within the Department of Energy as the executive agent for—

(1) the coordination of Department of Energy assistance to Federal, State, and local officials in responding to threats involving nuclear, chemical, and biological weapons or related materials or technologies, including assistance in identifying, neutralizing, dismantling, and disposing of nuclear weapons and related materials and technologies; and

(2) the coordination of Department of Energy assistance to the Department of Defense in carrying out that department's responsibilities under subsection (a).

(c) Funding. — Of the total amount authorized to be appropriated under section 301, \$15,000,000 is available for providing assistance described in subsection (a).

SEC. 1414. CHEMICAL-BIOLOGICAL EMERGENCY RESPONSE TEAM.

(a) Department of Defense Rapid Response Team. — The Secretary of Defense shall develop and maintain at least one domestic terrorism rapid response team composed of members of the Armed Forces and employees of the Department of Defense who are capable of aiding Federal, State, and local officials in the detection, neutralization, containment, dismantlement, and disposal of weapons of mass destruction containing chemical, biological, or related materials.

(b) Addition to Federal Response Plan. — Not later than December 31, 1997, the Director of the Federal Emergency Management Agency shall develop and incorporate into existing Federal emergency response plans and programs prepared under section 611(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196(b)) guidance on the use and deployment of the rapid response teams established under this section to respond to emergencies involving weapons of mass destruction. The Director shall carry out this subsection in consultation with the Secretary of Defense and the heads of other Federal agencies involved with the emergency response plans.

SEC. 1415. TESTING OF PREPAREDNESS FOR EMERGENCIES INVOLVING NUCLEAR, RADIOLOGICAL, CHEMICAL, AND BIOLOGICAL WEAPONS.

(a) Emergencies Involving Chemical or Biological Weapons.—

(1) The Secretary of Defense shall develop and carry out a program for testing and improving the responses of Federal, State, and local agencies to emergencies involving biological weapons and related materials and emergencies involving chemical weapons and related materials.

(2) The program shall include exercises to be carried out during each of five successive fiscal years beginning with fiscal year 1997.

(3) In developing and carrying out the program, the Secretary shall coordinate with the Director of the Federal Bureau of Investigation, the Director of the Federal

Emergency Management Agency, the Secretary of Energy, and the heads of any other Federal, State, and local government agencies that have an expertise or responsibilities relevant to emergencies described in paragraph (1).

(b) Emergencies Involving Nuclear and Radiological Weapons.—

(1) The Secretary of Energy shall develop and carry out a program for testing and improving the responses of Federal, State, and local agencies to emergencies involving nuclear and radiological weapons and related materials.

(2) The program shall include exercises to be carried out during each of five successive fiscal years beginning with fiscal year 1997.

(3) In developing and carrying out the program, the Secretary shall coordinate with the Director of the Federal Bureau of Investigation, the Director of the Federal Emergency Management Agency, the Secretary of Defense, and the heads of any other Federal, State, and local government agencies that have an expertise or responsibilities relevant to emergencies described in paragraph (1).

(c) Annual Revisions of Programs. — The official responsible for carrying out a program developed under subsection (a) or (b) shall revise the program not later than June 1 in each fiscal year covered by the program. The revisions shall include adjustments that the official determines necessary or appropriate on the basis of the lessons learned from the exercise or exercises carried out under the program in the fiscal year, including lessons learned regarding coordination problems and equipment deficiencies.

(d) Option To Transfer Responsibility.—

(1) The President may designate the head of an agency outside the Department of Defense to assume the responsibility for carrying out the program developed under subsection (a) beginning on or after October 1, 1999, and relieve the Secretary of Defense of that responsibility upon the assumption of the responsibility by the designated official.

(2) The President may designate the head of an agency outside the Department of Energy to assume the responsibility for carrying out the program developed under subsection (b) beginning on or after October 1, 1999, and relieve the Secretary of Energy of that responsibility upon the assumption of the responsibility by the designated official.

(e) Funding. — Of the total amount authorized to be appropriated under section 301, \$15,000,000 is available for the development and execution of the programs required by this section, including the participation of State and local agencies in exercises carried out under the programs.

SEC. 1416. MILITARY ASSISTANCE TO CIVILIAN LAW ENFORCEMENT OFFICIALS IN EMERGENCY SITUATIONS INVOLVING BIOLOGICAL OR CHEMICAL WEAPONS.

(a) Assistance Authorized.— (1) Chapter 18 of title 10, United States Code, is amended by adding at the end the following new section:

Sec. 382. Emergency situations involving chemical or biological weapons of mass destruction

(a) In General.— The Secretary of Defense, upon the request of the Attorney General, may provide assistance in support of Department of Justice activities relating to the enforcement of section 175 or 2332c of title 18 during an emergency situation involving a biological or chemical weapon of mass destruction. Department of Defense resources, including personnel of the Department of Defense, may be used to provide such assistance if—

(1) the Secretary of Defense and the Attorney General jointly determine that an emergency situation exists; and

(2) the Secretary of Defense determines that the provision of such assistance will not adversely affect the military preparedness of the United States.

(b) Emergency Situations Covered.— In this section, the term emergency situation involving a biological or chemical weapon of mass destruction means a circumstance involving a biological or chemical weapon of mass destruction—

(1) that poses a serious threat to the interests of the United States; and

(2) in which—

(A) civilian expertise and capabilities are not readily available to provide the required assistance to counter the threat immediately posed by the weapon involved;

(B) special capabilities and expertise of the Department of Defense are necessary and critical to counter the threat posed by the weapon involved; and

(C) enforcement of section 175 or 2332c of title 18 would be seriously impaired if the Department of Defense assistance were not provided.

(c) Forms of Assistance.— The assistance referred to in subsection (a) includes the operation of equipment (including equipment made available under section 372 of this title) to monitor, contain, disable, or dispose of the weapon involved or elements of the weapon.

(d) Regulations.—

(1) The Secretary of Defense and the Attorney General shall jointly prescribe regulations concerning the types of assistance that may be provided under this section. Such regulations shall also describe the actions that Department of Defense personnel may take in circumstances incident to the provision of assistance under this section.

(2)(A) Except as provided in subparagraph (B), the regulations may not authorize the following actions:

(i) Arrest.

(ii) Any direct participation in conducting a search for or seizure of evidence related to a violation of section 175 or 2332c of title 18.

(iii) Any direct participation in the collection of intelligence for law enforcement purposes.

(B) The regulations may authorize an action described in subparagraph (A) to be taken under the following conditions:

(i) The action is considered necessary for the immediate protection of human life, and civilian law enforcement officials are not capable of taking the action.

(ii) The action is otherwise authorized under subsection (c) or under otherwise applicable law.

(e) Reimbursements. — The Secretary of Defense shall require reimbursement as a condition for providing assistance under this section to the extent required under section 377 of this title.

(f) Delegations of Authority.—

(1) Except to the extent otherwise provided by the Secretary of Defense, the Deputy Secretary of Defense may exercise the authority of the Secretary of Defense under this section. The Secretary of Defense may delegate the Secretary's authority under this section only to an Under Secretary of Defense or an Assistant Secretary of Defense and only if the Under Secretary or Assistant Secretary to whom delegated has been designated by the Secretary to act for, and to exercise the general powers of, the Secretary.

(2) Except to the extent otherwise provided by the Attorney General, the Deputy Attorney General may exercise the authority of the Attorney General under this section. The Attorney General may delegate that authority only to the Associate Attorney General or an Assistant Attorney General and only if the Associate Attorney General or Assistant Attorney General to whom delegated has been designated by the Attorney General to act for, and to exercise the general powers of, the Attorney General.

(g) Relationship to Other Authority. — Nothing in this section shall be construed to restrict any executive branch authority regarding use of members of the armed forces or equipment of the Department of Defense that was in effect before the date of the enactment of the National Defense Authorization Act for Fiscal Year 1997.

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“382. Emergency situations involving chemical or biological weapons of mass destruction.”

(b) Conforming Amendment to Condition for Providing Equipment and Facilities. — Section 372(b)(1) of title 10, United States Code, is amended by adding at the end the following new sentence: “The requirement for a determination that an item is not reasonably available from another source does not apply to assistance provided under section 382 of this title pursuant to a request of the Attorney General for the assistance.”

(c) Conforming Amendments Relating to Authority To Request Assistance.— (1)(A) Chapter 10 of title 18, United States Code, is amended by inserting after section 175 the following new section:

Sec. 175a. Requests for military assistance to enforce prohibition in certain emergencies

“The Attorney General may request the Secretary of Defense to provide assistance under section 382 of title 10 in support of Department of Justice activities relating to the enforcement of section 175 of this title in an emergency situation involving a biological weapon of mass destruction. The authority to make such a request may be exercised by another official of the Department of Justice in accordance with section 382(f)(2) of title 10.”

(B) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 175 the following new item:

“175a. Requests for military assistance to enforce prohibition in certain emergencies.”

(2)(A) The chapter 133B of title 18, United States Code, that relates to terrorism is amended by inserting after section 2332c the following new section:

Sec. 2332d. Requests for military assistance to enforce prohibition in certain emergencies

“The Attorney General may request the Secretary of Defense to provide assistance under section 382 of title 10 in support of Department of Justice activities relating to the enforcement of section 2332c of this title during an emergency situation involving a chemical weapon of mass destruction. The authority to make such a request may be exercised by another official of the Department of Justice in accordance with section 382(f)(2) of title 10.”

(B) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2332c the following new item:

“2332d. Requests for military assistance to enforce prohibition in certain emergencies.”

(d) Civilian Expertise: — President shall take reasonable measures to reduce the reliance of civilian law enforcement officials on Department of Defense resources to counter the threat posed by the use or potential use of biological and chemical weapons of mass destruction within the United States. The measures shall include—

(1) actions to increase civilian law enforcement expertise to counter such a threat; and

(2) actions to improve coordination between civilian law enforcement officials and other civilian sources of expertise, within and outside the Federal Government, to counter such a threat.

(e) Reports. — The President shall submit to Congress the following reports:

(1) Not later than 90 days after the date of the enactment of this Act, a report describing the respective policy functions and operational roles of Federal agencies in countering the threat posed by the use or potential use of biological and chemical weapons of mass destruction within the United States.

(2) Not later than one year after such date, a report describing—

(A) the actions planned to be taken to carry out subsection (d); and

(B) the costs of such actions.

(3) Not later than three years after such date, a report updating the information provided in the reports submitted pursuant to paragraphs (1) and (2), including the measures taken pursuant to subsection (d).

SEC. 1417. RAPID RESPONSE INFORMATION SYSTEM.

(a) Inventory of Rapid Response Assets.—

(1) The head of each Federal Response Plan agency shall develop and maintain an inventory of physical equipment and assets under the jurisdiction of that agency that could be made available to aid State and local officials in search and rescue and other disaster management and mitigation efforts associated with an emergency involving weapons of mass destruction. The agency head shall submit a copy of the inventory, and any updates of the inventory, to the Director of the Federal Emergency Management Agency for inclusion in the master inventory required under subsection (b).

(2) Each inventory shall include a separate listing of any equipment that is excess to the needs of that agency and could be considered for disposal as excess or surplus property for use for response and training with regard to emergencies involving weapons of mass destruction.

(b) Master Inventory. — The Director of the Federal Emergency Management Agency shall compile and maintain a comprehensive listing of all inventories prepared under subsection (a). The first such master list shall be completed not later than December 31, 1997, and shall be updated annually thereafter.

(c) Addition to Federal Response Plan. — Not later than December 31, 1997, the Director of the Federal Emergency Management Agency shall develop and incorporate into existing Federal emergency response plans and programs prepared under section 611(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5196(b)) guidance on accessing and using the physical equipment and assets included in the master list developed under subsection to respond to emergencies involving weapons of mass destruction.

(d) Database on Chemical and Biological Materials. — The Director of the Federal Emergency Management Agency, in consultation with the Secretary of Defense, shall prepare a database on chemical and biological agents and munitions characteristics and safety precautions for civilian use. The initial design and compilation of the database shall be completed not later than December 31, 1997.

(e) Access to Inventory and Database. — The Director of the Federal Emergency Management Agency shall design and maintain a system to give Federal, State, and local officials access to the inventory listing and database maintained under this section in the event of an emergency involving weapons of mass destruction or to prepare and train to respond to such an emergency. The system shall include a secure but accessible emergency response hotline to access information and request assistance.

Notes

¹ This copy of the “Defense Against Weapons of Mass Destruction Act of 1996” was downloaded directly from the government printing office web site: <http://frwebgate.access.gpo.gov/cgi-bin/useftp.cgi?IPaddress=wais.access.gpo.go> on November 15, 1997. The legislation appears essentially in the same presentation style in which it was downloaded, with only minor format modifications to fit standard margins and facilitate readability.

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