



**October 1, 2008**

*District of Columbia*

*Bladensburg\**

*Bowie*

*College Park*

*Frederick*

*Frederick County*

*Gaithersburg*

*Greenbelt*

*Montgomery County*

*Prince George's County*

*Rockville*

*Takoma Park*

*Alexandria*

*Arlington County*

*Fairfax*

*Fairfax County*

*Falls Church*

*Loudoun County*

*Manassas*

*Manassas Park*

*Prince William County*

*\*Adjunct member*

## **Report to the Board of Directors and Chief Administrative Officers Committee**

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General Counsel**

### **STATUS OF MUTUAL AID DOCUMENTS WITHIN THE NATIONAL CAPITOL REGION**

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#### **Background**

Creating and facilitating intergovernmental assistance has been a major effort of COG since its inception. Over the years in excess of two dozen agreements for intergovernmental assistance – referred to as “mutual aid agreements” were entered into by some or all of the COG jurisdictions.

Litigation in the 80’s subjecting an assisting jurisdiction to the laws and procedures of a jurisdiction requesting aid precluded the execution of new agreements or the amendment of older ones. See, e.g., *Biscoe v. Arlington County*, 238 U.S.App.D.C. 206 (1984).

After the terrorist attacks in New York and Arlington County on September 11, 2001, there was heightened awareness of the need for first responder mutual aid. Governments cooperated because circumstances required mutual aid. Fortunately, the generous and courageous acts of cooperation during these situations did not result in litigation over liability and related issues. Preparation for security during the World Bank demonstrations and the sniper incidents in the fall of 2002 provided other examples of the need for enhanced mutual cooperation and aid.

As the region focused on area-wide emergency response revision and improvement of existing mutual aid agreements became a necessity. The COG Attorneys Committee, working with Maryland and Virginia state attorneys general and federal FEMA attorneys, crafted a proposed federal solution for regional mutual aid.

After the concept of a federal authorization for liability-limited mutual aid in the National Capital Region was approved by the state attorneys general, COG shopped a proposed draft to several federal departments seeking administration support. After about a year, OMB, DHS, and Justice indicated that they would support such legislation. The House Government Reform Committee held hearing and was prepared to proceed when the House Judiciary Committee raised jurisdictional concerns.

The Report of the 9/11 Commission addressed the national need for enhanced inter-jurisdictional mutual aid and specifically recommended federal-state-local mutual aid for the National Capital Region. In its version of the 9/11 Commission Act, the Senate adopted provisions very close to those COG initially recommended to the House and, after conference, NCR mutual aid was authorized in the Intelligence Reform and Terrorism Protection Act of 2004, Pub. L. 108-458, Title VII, Subtitle C, § 7302, 118 Stat. 3840 (the "Act").

### **The National Capital Region Mutual Aid Agreement**

The COG Attorneys Committee, with the continued assistance of DHS and the state attorneys general, drafted a National Capital Region Mutual Aid Agreement ("NCR-MAA"), designed to implement the authority of the Act. Originally the attorneys contemplated a series of mutual aid agreements, as in the past, addressing specific needs or functions, e.g., police, fire, etc. However, since the Act contemplates the agreement(s) to be authorized by governing bodies and signed by chief elected officials, the attorneys recommended the NCR-MAA to be a multi-purpose political level agreement, delegating the functions of requesting aid and responding to emergencies to the professional responder.

The NCR-MAA is not self-executing. For each responder function it authorizes development of an Operations Plan to be executed and implemented by the appropriate official(s) within each jurisdiction, including future amendments required or desired as a result of technological or organizational changes. This places the planning burden on the appropriate officials and avoids the necessity of returning for political acceptance for technical changes. Further, it requires a specific designation or delegation of authority within each jurisdiction, so the requesting or responding officials or agents are acting within the clearly defined authority of both the NCR-MAA and the Act.

The COG Board approved the NCR-MAA in November 2005 and forwarded to the COG jurisdictions and other potential parties for execution. The agreement provided for execution in duplicate originals. COG has been informed that all 21 participating jurisdictions have executed the NCR-MAA, except the City of Frederick. We have copies of the executed signature pages from all but Montgomery County. We have also been

informed that WMATA and MWAA have executed the NCR-MAA and that the Governors of Maryland and Virginia have authorized execution. We are currently attempting to obtain formal copies of these signatures as well. We have also initiated requests with DHS to consider signing on behalf of federal agencies and have had meetings with the Capitol Police to solicit their formal adoption as well.

### **Development of Operations Plans**

In early 2006 we began to brief the various COG responder committees with the opportunities and needs for Operations Plans development. Meetings were held with the Police Chiefs Committee, the Fire Chiefs Committee, the Public Works Directors Committee (for debris management), the Emergency Managers Committee, and the Public Health Officials Committee, and several of its subcommittees, e.g., Surge, Pandemic, etc. We also had meetings with the Regional Chief Information Officers Committee and the Water and Wastewater Utilities Committee. Both of these latter include private or non-governmental entities as participants.

The Police and Fire Chiefs and the Public Works Committees referred the matter to their respective planning subcommittees for consideration, which began to commence work on preparation of specific Operations Plans.

The COG Attorneys Committee worked closely with these planning subcommittees to make sure that their efforts reflected the authorities and requirements of both the Act and the NCR-MAA.

The Emergency Managers and Chief Information Officers were dealing with other issues which they believed had higher priorities and indicated they would deal with mutual aid at a later date. The Public Health Officials (whose policy considerations are largely state functions) elected to continue their joint planning efforts without formal mutual aid authority. These efforts include a Bioevent Guidance Plan, a Regional Disease and Syndromic Surveillance System (a joint public/private activity), and coordination of local medical prophylaxis distribution. The Chief Information Officers have been focusing on regional data sharing and creating an ongoing system with the CAO's as COG's Interoperability Council.

The Water and Waste Water Utilities attempted to create an Operations Plan under the NCR-MAA. This group, however, consists of several COG jurisdictions which provide these services directly, several quasi-governmental entities or special purpose governments, and one strictly private utility. After much discussion, it was determined that the Utilities would create a separate Mutual Aid Agreement and would attempt to secure a technical legislative amendment to the Act to authorize their joint efforts.

## Status of the Operations Plans

**NOTE:** Not all COG jurisdictions provide the same services; signatories will vary and may include non COG entities.

### 1. Police Operations Plans

The Police Operations Plan was approved by the Chiefs in May 2008 and is currently being circulated for execution. Current signatures include:

#### COG Jurisdictions which have executed

• Alexandria	• Alexandria (Sheriff)
• Arlington County	• District of Columbia
• Fairfax	• Fairfax County
• Greenbelt	• Loudoun County (Sheriff)
• Manassas	• Montgomery County
• Prince George's County	• Prince William County
• Takoma Park	

#### Non-COG Jurisdictions or Entities which have executed

• Maryland State Police	• U.S. Park Police
• Metro. Wash. Airports Authority	• Military District of Washington
• U.S. Immigration & Customs (ICE)	

#### COG Jurisdictions which have NOT executed

• Bladensburg	• Bowie
• Falls Church	• Frederick
• Frederick County	• Gaithersburg
• Manassas Park	• Rockville

### 2. Public Works (Debris Management)

#### COG Jurisdictions which have executed

• Fairfax County	• Manassas
• Manassas Park	• Prince William County

#### COG Jurisdictions which have NOT executed

• Alexandria	• Arlington County
• District of Columbia	• Loudoun County
• Montgomery County	• Prince George's County

### 3. Fire and Rescue

Fire and Rescue (with several complicated annexes, e.g., HAZMAT, air rescue, etc.) has been completed by the Planning Subcommittee. If approved by the Chiefs it will be forwarded for execution in November.

### 4. Emergency Managers

The Emergency Managers have now drafted a blanket Operations Plans to cover local responders not included in a separate plan. This has been reviewed by the COG Attorneys Committee, which met with the Emergency Managers Planners this month to finalize a draft. If approved by the Managers, this should be circulated for execution in November or December.

### 5. Water and Waste Water Utilities

A Draft has been approved by the drafting group and the group's attorneys working with the COG Attorneys. It has recently been circulated. Fairfax Water Authority is the only current signatory.