

**CROSS-BORDER EMERGENCY RESPONSE:
DECREASING INTERNATIONAL BORDER CROSSING
WAIT TIMES AND MAINTAINING HEIGHTENED
SECURITY VIGILANCE IN THE POST 9/11 ERA**

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INTRODUCTION

Fires are burning faster than ever. Changes in the structural components used in home construction, as well as use of more synthetic materials in common household items (known in the fire service as “fuel loads”), has resulted in residential house fires burning at rates far faster than in the past.¹ While overall firefighter deaths have decreased over

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1. Stephen Kerber, *Analysis of Changing Residential Fire Dynamics and Its*

the past thirty years, the rate of fire deaths that occur as a result of injuries sustained inside the actual fire structure has increased.² The rates at which these fires burn are inextricably connected to the increased deaths and injuries inflicted upon firefighters operating at these fast-paced infernos.³

The National Fire Protection Association (NFPA) and the National Institute for Occupational Safety and Health (NIOSH) report that, nationwide, there is a lack of sufficient fire department staffing.⁴ As a result, millions of dollars are spent in “time-lost injuries,” and numerous line-of-duty deaths every year.⁵ One way that fire departments attempt to get more personnel on-scene to decrease firefighter injuries and deaths is through a process called mutual aid.

Mutual aid is the concept in which one (or many) emergency service providers share their resources and personnel with another provider, organization, or government in times of emergency.⁶ Mutual aid responses tend to be rooted in agreements between individual agencies: “between state[s] and localities in th[ose] state[s]; . . . between two or more states in a region; between states and tribes; or internationally between states and neighboring jurisdictions” in other nations.⁷ Just as there are numerous types of mutual aid agreements, there are similarly numerous methods for putting these agreements into action. The agreements can be codified through state, local, or national legislatures and/or through informal agreements, typically in the form of memoranda of understanding (MOUs) that spell out how resources will be provided

Implications on Firefighter Operational Timeframes 2, UNDERWRITERS LABORATORIES 2-3 (2012), available at http://newscience.ul.com/wp-content/uploads/2014/04/Analysis_of_Changing_Residential_Fire_Dynamics_and_Its_Implications_on_Firefighter_Operational_Timeframes.pdf (last visited Oct. 17, 2016).

2. Rita F. Fahy, *U.S. Fire Service Fatalities in Structure Fires, 1977-2009*, NATIONAL FIRE PROTECTION ASSOCIATION 19 (June, 2010), available at <http://www.nfpa.org/~media/files/research/nfpa-reports/fire-service-statistics/osfatalitiesinstructures.pdf?la=en> (last visited Oct. 17, 2016).

3. See Kerber, *supra* note 1, at 2-3.

4. Kevin Wilson, *Fire Department Staffing: A Need, Not a Want*, FIRE ENGINEERING (Aug. 1, 2009), available at <http://www.fireengineering.com/articles/print/volume-162/issue-8/features/fire-department-staffing-a-need-not-a-want.html> (last visited Oct. 17, 2016)

5. *Id.*

6. See generally *ASTHO Legal Preparedness Series Emergency Authority & Immunity Toolkit: Mutual Aid and Assistance Agreements Fact Sheet*, ASSOCIATION OF STATE AND TERRITORIAL HEALTH OFFICIALS, available at <http://www.astho.org/Programs/Preparedness/Public-Health-Emergency-Law/Emergency-Authority-and-Immunity-Toolkit/Mutual-Aid-and-Assistance-Agreements-Fact-Sheet/> (last visited Oct. 17, 2016).

7. *Id.*

across jurisdictional lines.⁸

This concept of mutual aid in America can be traced back early into American history. The nation's first fire department was founded well before the Declaration of Independence. In 1678, Boston, then a city of less than 4,500 people,⁹ established the first fire department in America,¹⁰ importing the first fire engine from London.¹¹ Mutual aid agreements likely followed shortly thereafter to ensure that adequate staffing and apparatus arrived on scene to address whatever intricacies the incident presented.

While localized mutual aid, specifically within states or between states, is well practiced and has a long-standing history, the concepts of broader national and international mutual aid are more recent developments. Indeed, one of the earliest examples of a national mutual aid policy comes from the late 1940s and early 1950s when the U.S. was concerned about a nuclear attack from the Soviet Union.¹² In 1950, through Executive Order 10,186, President Truman established the Federal Civil Defense Administration.¹³ The Administrator of the agency was then charged with, inter alia, "assist[ing] and encourag[ing] . . . States or groups of States or any one or more States and any neighboring state, province, or similar political subdivision of a foreign country . . . in negotiating and entering into agreements or compacts for mutual aid across State lines. . ." ¹⁴

Stemming from the aforementioned Executive Order and similar directives from the legislature, there are now three international mutual aid agreements (or compacts) that exist between the United States and Canada.¹⁵ However, these international agreements are insufficient in

8. *See id.*

9. *See Population Trends in Boston 1640 - 1990*, BOSTON HISTORY AND ARCHITECTURE, available at <http://www.iboston.org/mcp.php?pid=popFig> (last visited Oct. 19, 2016).

10. Paul Hashagen, *Firefighting in Colonial America*, FIREHOUSE (Dec. 1, 2003), available at <http://www.firehouse.com/news/10527819/firefighting-in-colonial-america> (last visited Nov. 13, 2016).

11. *History of Fire Fighting*, A FIREPRO, available at <http://www.afirepro.com/history.html> (last visited Oct. 19, 2016).

12. *EMAC and Mutual Aid History*, EMERGENCY MANAGEMENT ASSISTANCE COMPACT, available at <http://www.emacweb.org/index.php/learnaboutemac/history/mutual-aid-history> (last visited Oct. 19, 2016).

13. Exec. Order No. 10,186, 15 C.F.R. 8557 (1950).

14. *Id.* ¶ 2(e).

15. Beverly Bell, *Mutual Aid, Mutual Benefits: Agreements Between Canada, U.S. States Can Bring Emergency Assistance More Quickly*, THE COUNCIL OF STATE GOVERNMENTS, available at http://www.csg.org/pubs/capitolideas/2013_sept_oct/internationalmutualaid.aspx#! (last visited Oct. 18, 2016).

their current state as they do not contemplate, or account for, the most frequent use of mutual aid: localized rapid responses to scenes of structure fires or complex rescues. Similarly, they do not provide a basis or means for which emergency responders can cross the border in an expeditious and secure manner. Though technology exists to facilitate more rapid responses, a system utilizing that technology has yet to come on line.

The Northern Emergency Management Assistance Compact (NEMAC) is the most recent of the three international mutual aid agreements between the U.S. and Canada, ratified by the U.S. Congress in January 2013.¹⁶ The ratifying legislation provides consent to the agreement between the states of Illinois, Indiana, North Dakota, Michigan, Minnesota, Montana, Ohio, North Dakota, Wisconsin, New York, Pennsylvania, and the Canadian provinces of Alberta, Ontario, Manitoba, and Saskatchewan.¹⁷ The stated purpose of the law “is to provide for the possibility of mutual assistance among the participating jurisdictions in managing any emergency or disaster when the affected jurisdiction or jurisdictions ask for assistance,” regardless of whether it arises from a natural disaster, manmade disaster or other form of “civil emergency . . .”¹⁸ The other two agreements have similarly stated purposes and are comprised of other states/provinces that are sufficiently close to the border to warrant being included in such agreements.¹⁹ However, again, all three agreements lack foresight into the uniquely localized nature that most mutual aid responses entail. As will be discussed in greater detail below, the present framework upon which these agreements rest fails in that it imposes burdensome, time-consuming, and impractical requirements on responders before they engage in any sort of mutual aid response.

This paper will utilize the framework set forth in NEMAC as a means to simplify and interpret the processes and dictates set forth in the other two agreements. It will similarly use NEMAC as a grounds upon which recommendations can be implemented and extrapolated to for the other, already established, compacts/agreements. For purposes of

16. *See*, Joint Resolution Granting the Consent of Congress to the State and Emergency Management Assistance Memorandum of Understanding, Pub. L. No. 112-282 (2013) [hereinafter Pub. L. No. 112-282].

17. *Id.*

18. *Id.*

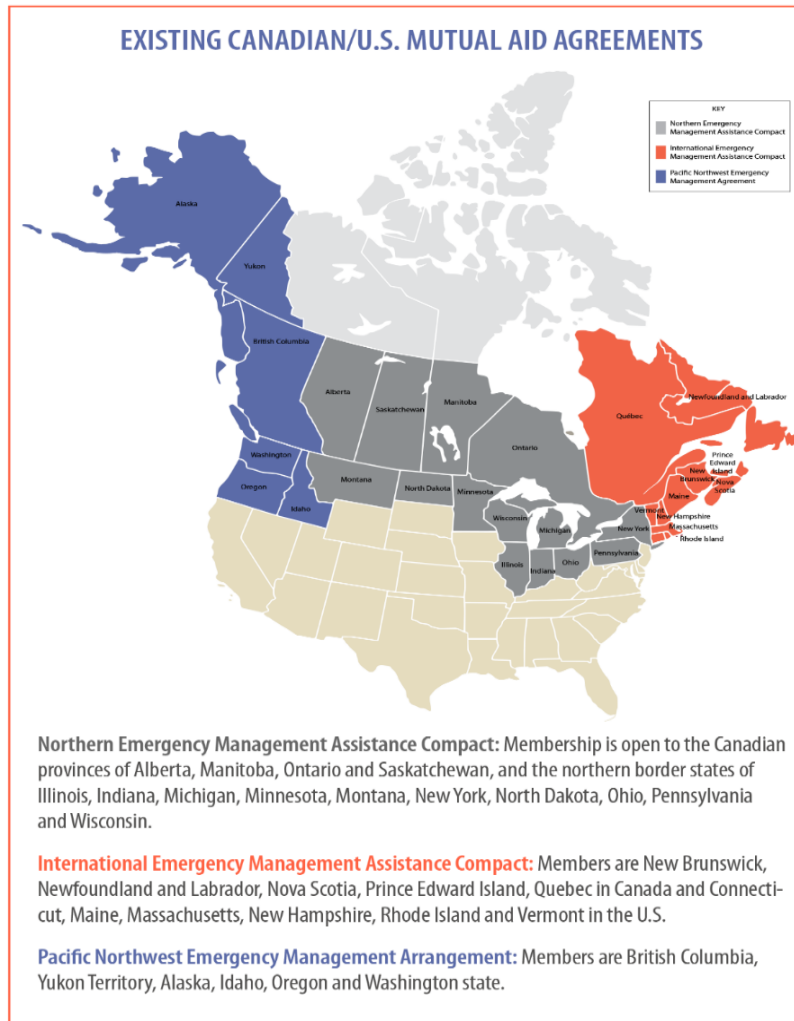
19. *See* Joint Resolution Granting the Consent of Congress to the International Emergency Management Assistance Memorandum of Understanding, Pub. L. No. 110-171, 121 Stat. 2467 (2007); *see also* Joint Resolution Granting the Consent of Congress to the Pacific Northwest Emergency Management Arrangement, Pub. L. No. 105-38, 112 Stat. 3402 (1998).

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illustration, the breakdown of how the remaining agreements are distributed amongst the states and provinces is represented in the below graphic from the Council of State Governors (CSG).



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While these statutes establish the authorizations available to states and provinces to offer mutual aid equipment and personnel, no concrete method for achieving rapid border crossing has taken hold. It bears noting, though, that there are certain pre-clearance mechanisms already authorized to be put in place in order to minimize border wait times and increase efficiency in emergency cross-border responses. However,

20. Bell, *supra* note 15.

national programs, utilizing state of the art technology to streamline and uniformly decrease border wait times while simultaneously maintaining vigilant protection of each nations' borders have not been adopted. Indeed, a recent report by the National Public Safety Telecommunications Council (U.S.) and the Canadian Interoperability Technology Interest Group identified, as a goal, "national[] standardized approach[es] for emergency vehicle border crossings. . ."21

This paper will analyze the legal framework of authorizations that exist to facilitate border crossings in emergency scenarios and will review options to further expedite those crossings while retaining the highest possible vigilance. Specifically, the paper will review and analyze the following: anecdotal evidence of a failed emergency border crossing, current cross-border mutual aid enabling legislation, the NEMAC model, current methods for cross-border responses, threats posed to national security by cross-border emergency responses, and available technology to expedite border crossing. Finally, this paper will discuss recommendations to outfit cross-national responding apparatus with an EZ-Pass like device, similar to the NEXUS program currently in use at many border crossings. Accordingly, this paper will review the efficacy of the NEXUS program and how that program, or a similar program, could be used to facilitate rapid and efficient border crossings for cross-national mutual aid purposes while continuing to maintain perimeter security in both the U.S. and Canada.

I. CASE STUDY: ROUSES POINT, NEW YORK FIRE

In November 2007, the Rouses Point Volunteer Fire Department in Clinton County, New York was battling a fire at the Anchorage Inn restaurant – a local landmark – when conditions warranted calling for mutual aid.²² Rouses Point is a rural town with only about 2,209 residents, which severely restricts the population pool from which the fire department can recruit firefighters.²³ This means that the department must rely on mutual aid agreements with neighboring departments, both

21. CANADIAN INTEROPERABILITY TECH. INTEREST GRP & NAT'L PUB. SAFETY TELECOMM. COUNCIL, CROSS BORDER COMMUNICATIONS REPORT: BARRIERS, OPPORTUNITIES, AND SOLUTIONS FOR BORDER AREA EMERGENCY RESPONDERS 42 (2015), available at http://www.npstc.org/download.jsp?tableId=37&column=217&id=3360&file=CrossBorder_Communications_FINAL_20150311.pdf (last visited Oct. 18, 2016).

22. Jeane Meserve & Mike M. Ahlers, *Canadian Firetruck Responding to U.S. Call Held up at Border*, CNN (Nov. 14, 2007), available at <http://www.cnn.com/2007/US/11/14/border.firetruck/> (last visited Oct. 18, 2016).

23. U.S. CENSUS BUREAU, POPULATION AND HOUSING UNIT COUNTS TABLE 8, ROUSES POINT VILLAGE (2010).

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in the U.S. and Canada. Pursuant to a longstanding agreement (initiated in the 1950s)²⁴, Rouses Point Volunteer Fire Chief Michael LeBlanc made the call to initiate a response from four fire departments across the border in Quebec, as well as several local U.S. departments.²⁵

The historical mutual aid agreement, utilized during the Anchorage Inn restaurant fire, comprises all fire departments in the county of Clinton, New York, as well as four Canadian departments and two departments in Vermont.²⁶ When the call is made to request additional resources from neighboring departments, the incident commander will radio Clinton County's dispatch, who then calls its Canadian counterpart to send out the tones²⁷ (dispatch) to the Canadian departments that are being requested.²⁸ Then, either the requesting fire department or the requesting dispatch center will call U.S. Customs and Border Patrol to inform them that they have initiated mutual aid from a Canadian department and give the location of where the responding apparatus will be headed in the U.S.²⁹ When the responding Canadian apparatus make it to the physical border crossing, they are not (the majority of the time) simply waved through. Instead, they usually have to inform the customs officer how many people are on board, and may be asked additional questions.³⁰

In this particular instance, in November 2007, firefighters responding from Lacolle, Quebec reported that when they arrived at the Rouses Point border crossing, with lights and sirens activated, they were held up and questioned for fifteen minutes.³¹ During the questioning, inspection of the firefighters' documentation, and running the license plate on the truck, the fire in Rouses Point raged on with firefighters fatiguing from battling the blaze.³² Indeed, the chief of the Quebec department that responded noted that in the thirty years he had been crossing the border during mutual aid responses, the only question he has

24. Telephone Interview with Eric Day, Director, Clinton County Office of Emergency Services (Mar. 1, 2016) [hereinafter Day Interview].

25. Meserve & Ahlers, *supra* note 22.

26. Day Interview, *supra* note 24.

27. Tones are the sounds used to let firefighters know when they are being dispatched to the scene of a call.

28. Day Interview, *supra* note 24.

29. *Id.* When U.S. apparatus are requested to Canada, using this same agreement, the responding agency reaches out to U.S. Customs and Border Patrol, which then calls its Canadian counterpart to forewarn it of the imminent crossing by U.S. first responders. *Id.*

30. *Id.*

31. Note that the U.S. Customs and Border Protection officials report it was only eight minutes. Meserve & Ahlers, *supra* note 22.

32. *Id.*

ever been asked by border agents was ““Where’s the fire?””³³ This time, however, Chief Hébert stated that U.S. customs officials requested photo identification and held up the responding apparatus because the IDs the Canadian firefighters had did not contain date of birth or expiration date information.³⁴

According to Chris Trombley, another chief on scene at the fire, four additional fire departments that responded to the call were also held up for two minutes at the border while officials conducted similar checks to those on the Lacolle truck.³⁵ This, Chief Trombley stated, is still significantly longer than border holdups in the past.³⁶ Chief Trombley reports that typical border crossing times for fire apparatus coming through under emergency scenarios are thirty seconds or less.³⁷ This, of course, has to be the case, for on the fireground, every minute that passes between a call for mutual aid and the arrival of the responding apparatus is invaluable. Fatigued firefighters are more prone to injury, and, in extreme cases, even death.³⁸ Accordingly, if firefighters are held up in their mutual aid response, other firefighters’ lives are put at increased risk.

At the Anchorage Inn restaurant fire a firefighter was injured during operations.³⁹ Chief LeBlanc reported that the firefighter suffered from minor smoke inhalation and was treated on scene.⁴⁰ While this injury was relatively inconsequential and cannot definitively be connected to the delayed response by the Quebec departments, it illustrates the inherent danger of operating on the fireground and the possibility for injury. The chance of injury increases when there are insufficient or fatigued personnel on the scene.⁴¹ Chief Trombley stated that he felt that the outcome of the fire would have changed had the Quebec firefighters not been delayed at the border.⁴²

33. Ingrid Peritz, *U.S. Border Delay Kept Fire Crew From Blaze*, GLOBE AND MAIL (Nov. 15, 2007), available at <http://www.theglobeandmail.com/news/national/us-border-delay-kept-fire-crew-from-blaze/article697845/> (last visited Oct. 17, 2016).

34. *Id.*

35. Meserve & Ahlers, *supra* note 22.

36. *Id.*

37. *Id.*

38. ANTHONY AVILLO, FIREGROUND STRATEGIES 250 (Tony Quinn ed., 2nd Ed. 2008).

39. Meserve & Ahlers, *supra* note 22.

40. *Id.*

41. See Kevin Wilson, *Fire Department Staffing: A Need, Not a Want*, FIRE ENGINEERING (Aug. 8, 2009) available at <http://www.fireengineering.com/articles/print/volume-162/issue-8/features/fire-department-staffing-a-need-not-a-want.html> (last visited Oct. 17, 2016).

42. Meserve & Ahlers, *supra* note 22.

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While meetings have occurred between parties on both sides of the border, including fire and customs enforcement officials, no concrete nationalized plan has taken hold. Despite claims by U.S. officials that the event was an isolated instance, at least one person from the New York State Association of Fire Chiefs reports that this is “not an entirely isolated incident. . .”⁴³ With an average of four to five cross-border responses every month,⁴⁴ there is certainly a chance, even a likelihood, that responding apparatus and personnel will be held up at the border again.

This case study illustrates that even when a longstanding mutual aid agreement is in place, the need for heightened security in a post-9/11 world may hinder the operation of that agreement. Of course, none of the fire departments involved, nor the federal border protection agencies, are to blame here. In order to ensure that this type of scenario does not become more widespread, an international plan must be developed to facilitate rapid border crossing in times of localized emergency. Any plan must take into consideration the need for expedited border crossing and the hurried nature in which firefighters assemble their gear and make their way from their homes to the firehouse before responding on the apparatus. This includes accounting for the fact that frequently, when firefighters rush from their homes in the middle of the night to respond to a call, they do not necessarily stop to think if they have their passports or licenses. Leveraging existing technology could likely remedy the aforementioned issues with limited need for significant infrastructure investment. The following sections will describe the current cross-border mutual aid enabling legislation and how that legislation can be utilized to facilitate rapid emergency response across national boundaries.

II. CURRENT CROSS-BORDER MUTUAL AID ENABLING LEGISLATION

The authority for states to enter into compacts or agreements with other states, and foreign nations, comes from the “compact clause” of the United States Constitution.⁴⁵ The clause provides that “[n]o State shall, without the Consent of Congress . . . enter into any Agreement or Compact with another State, or with a foreign Power . . .”⁴⁶ Accordingly, in order for any state or a conglomerate of states to enter into an agreement with each other and/or with foreign nations or provinces,

43. Peritz, *supra* note 33.

44. Day Interview, *supra* note 24.

45. *See* U.S. CONST., art. I, §10, cl. 3.

46. *Id.*

congressional consent is required.

With at least one of the regional agreements listed above, there was no significant debate in the United States Congress regarding the compact between the U.S. states and Canadian provinces, partly because by the time the agreement reached Congress, all the affected states and provinces had already ratified or agreed to the compact.⁴⁷ In another one of the compacts, the agreement had already been operating for a number of years before the U.S. Congress took on the job of consenting to the agreement.⁴⁸ Thus, while Congress must provide assent/consent to these sorts of agreements, doing so is simply more of a rubber stamp than a hotly contested enactment.

There exists an additional source of authority for agreements between states and their neighbors (be those other states or countries) in the Stafford Act (42 U.S.C. 5121-207). In particular, 42 U.S.C. § 5196(a) sets forth that the Administrator of the Federal Emergency Management Agency is to give assistance to the states, going through the Department of State, in setting up mutual aid agreements between the states and with neighboring countries.⁴⁹

Canada has a similar statute, codified as the Emergency Management Act (S.C. 2007, c. 15), which sets forth that Canada's Minister of Public Safety and Emergency Preparedness is free to put together "joint emergency management plans with" the U.S.⁵⁰ The Minister is also permitted to coordinate responses by Canadian agencies to U.S. requests for emergency assistance.⁵¹ This statute parallels the Stafford Act and gives the Canadian Minister of Public Safety and Emergency Preparedness similar responsibilities and authorities to that of the Administrator of the Federal Emergency Management Agency.

Further authority for cross-border mutual aid comes from a treaty signed by the U.S. and Canada in 1986 titled "Agreement Between the Government of Canada and the Government of United States of America on Cooperation in Comprehensive Civil Emergency Planning and Management" (hereinafter "US-Canada Cooperation Agreement").⁵²

47. See 105 CONG. REC. 7,768-76 (1997); see 105 CONG. REC. 10,925-27 (1998); see 105 CONG. REC. 9,659 (1998) (regarding the Pacific Northwest agreement, however, similar lack of debate applies to all of the agreements).

48. See 110 CONG. REC. 6,405-07 (2007).

49. See 42 U.S.C. § 5196 (2016); see also Anne M. Murphy, *Community and Interjurisdictional Legal Preparedness*, 33 J.L. MED. & ETHICS 73, 75 (2005).

50. Emergency Management Act, S.C. 2007, c. 15, art. 4 (Can.).

51. *Id.* at art. 5.

52. See Agreement Between the Government of Canada and the Government of United States of America on Cooperation in Comprehensive Civil Emergency Planning and

The treaty calls for the formation of a “consultative group” that includes, as co-chairs, the Executive Director of Emergency Planning for Canada, and the Director of the Federal Emergency Management Agency for the U.S.⁵³ This treaty directs the consultative group to “consider means of cooperation in planning for comprehensive civil emergency management.”⁵⁴ Additionally, the treaty calls for facilitation of “planning and development” of mutual aid civil emergency management for provinces and states.⁵⁵ Most importantly for purposes of this paper, the treaty calls for the consultative group to “facilitate . . . the prompt entry into and exit from its territory of personnel, materials and equipment involved in cooperative programs covered under th[e] Agreement, subject to the applicable laws of each country.”⁵⁶

In 2008, Canadian and U.S. officials added to the litany of existing compacts and agreements and signed the “Agreement Between the Government of the United States of America and the Government of Canada on Cooperation in Comprehensive Civil Emergency Management Cooperation” (hereinafter EMC).⁵⁷ The EMC sets forth that the governments shall set up another “Consultative Group” that is charged with, amongst other things, “foster[ing] mutual assistance between Canada and the United States by facilitating, as appropriate, the prompt entry into and exit from their respective territories of personnel, equipment, resources, and services involved in cooperative programs . . .”⁵⁸ One problem though, is that as it was written, the consultative group consists only of representatives of federal agencies from the U.S. and Canada.⁵⁹ However, the agreement does leave open that the group can be expanded to include “[r]epresentatives of other . . . government departments or agencies . . . as deemed appropriate by the Consultative Group.”⁶⁰ Yet, without the built-in presence of state and local representatives, the group is missing the key component from which all emergency responses originate: the individual fire, EMS, and police departments from which resources are deployed.

Management, Can.-U.S., art. II, Annex A, Apr. 28, 1986.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

57. *See* Agreement Between the Government of the United States of American and the Government of Canada on Emergency Management Cooperation, Can.-U.S., Dec. 12, 2008, TIAS 09-707.

58. *Id.* at annex A § (2)(b)(iv).

59. *Id.* at annex A § (1).

60. *Id.* at annex A § (1)(d).

In 2011, President Obama and Canadian Prime Minister Harper announced, and set forth later that year, an action plan entitled *Beyond the Border: A Shared Vision for Perimeter Security and Economic Competitiveness*.⁶¹ The initiative is meant to embody a “shared approach to security in which both countries work together to address threats within, at, and away from our borders, while expediting lawful trade and travel.”⁶² This initiative set forth four “key areas of cooperation” on which each country would work together to achieve the goals set forth above, including detecting threats early.⁶³ Much of the initial action plan, though, is directed towards responding to mass casualty events and national disasters, and how the two countries have and will continue to develop the infrastructure to ensure proper cross-border response and data sharing.⁶⁴ However, this agreement, like other agreements discussed above, does not state how the countries are to address cross-border movement of emergency assets when the incident is more routine in nature; in other words, not a mass casualty event. The countries have, though, through conferences and subsequent agreements, made progress to enhance communications and data sharing between the countries’ border patrol and customs agencies, as well as local first responders.⁶⁵ However, they still have yet to implement a national plan to facilitate efficient, timely, and secure border crossings for emergency personnel and vehicles during routine calls for mutual aid.⁶⁶

III. THE NORTHERN EMERGENCY MANAGEMENT ASSISTANCE COMPACT (NEMAC) MODEL

The final authority for discussion in this area is the Northern Emergency Management Assistance Compact (NEMAC), which can be traced to the congressionally approved and presidentially ratified State and Province Emergency Management Assistance Memorandum of

61. *Beyond the Border: A Shared Vision for Perimeter Security and Economic Competitiveness*, DEP’T OF HOMELAND SECURITY, available at <https://www.dhs.gov/beyond-border> (last visited Oct. 16, 2016).

62. *Id.*

63. EXEC. OFFICE OF THE PRESIDENT, UNITED STATES-CANADA BEYOND THE BORDER: A SHARED VISION FOR PERIMETER SECURITY AND ECONOMIC COMPETITIVENESS, at ii-iv (2011).

64. *See generally id.*

65. *See generally* EXEC. OFFICE OF THE PRESIDENT, BEYOND THE BORDER IMPLEMENTATION REPORT (Dec., 2012) [hereinafter BBIR 2012]; *see generally* EXEC. OFFICE OF THE PRESIDENT, BEYOND THE BORDER IMPLEMENTATION REPORT (Dec., 2013) [hereinafter BBIR 2013]; *see generally* EXEC. OFFICE OF THE PRESIDENT, BEYOND THE BORDER IMPLEMENTATION REPORT (2014) [hereinafter BBIR 2014].

66. *See* BBIR 2012, *supra* note 65; BBIR 2013, *supra* note 65; BBIR 2014, *supra* note 65.

Understanding (SPEMAMU), entered into law on January 14, 2013.⁶⁷ SPEMAMU ultimately gave rise to NEMAC, but the enabling legislation for both is the same, Public Law 112-282.⁶⁸ This legislation, which NEMAC adopted and then supplemented, sets the guidelines and standards for, amongst other things, cross-border emergency responses.⁶⁹

One of the things that both SPEMAMU and the bylaws that NEMAC created get right are that both address liability and credentialing recognition.⁷⁰ Under these provisions of SPEMAMU and NEMAC, persons responding across the border will be afforded the same liability protections as responders in the requesting country.⁷¹ Similarly, a responder credentialed in one country shall be treated as if credentialed in the requesting country.⁷²

The problem with NEMAC, however, is that it primarily addresses large-scale disasters and does not contemplate the localized emergencies that most cross-border responses entail, such as structure fires, or complicated automobile-extrications. Although the homepage for the NEMAC website states that the NEMAC “can be used for *any* capability and capacity” and notes that this can include “natural disasters . . . to human-induced emergencies such as chemical spills and terrorist events,” this does not in fact appear to be practicable based on NEMAC’s operations manual.⁷³

Section I of NEMAC states that when use of the NEMAC system is needed and operations begin, the process “starts with the activation/alert phase.”⁷⁴ This part of the process requires “completion of the International Request for Assistance Form” (hereinafter the Form).⁷⁵ The Form is quite involved and goes so far as to require that the requesting state/province/agency “estimate[e] [the] costs for which an Assisting

67. See Act of Jan. 14, 2013, Pub. L. No. 112-282, 126 Stat. 2486.

68. *About NEMAC*, NORTHERN EMERGENCY MANAGEMENT ASSISTANCE COMPACT, available at <http://www.nemacweb.org/about/> (last visited Oct. 19, 2016) [hereinafter *About NEMAC*].

69. See *id.*

70. See Act of Jan. 14, 2013, Pub. L. No. 112-282, arts. V-VI, 126 Stat. 2489.

71. *Id.* art. VI.

72. *Id.* art. V.

73. *About NEMAC*, *supra* note 68 (emphasis added).

74. NEMAC, OPERATIONS MANUAL 7 (2014), available at http://www.nemacweb.org/wp-content/uploads/2015/08/Operations_Manual_Main_2014.pdf (last visited Oct. 20, 2016) [hereinafter OPERATIONS MANUAL].

75. *Id.* Note, however, that in Section III, the Operations Manual states that requests for assistance can be made verbally and under “extenuating circumstances” the IREQ-A Form may be completed after responding to the scene. *Id.* at 11.

Jurisdiction may ask to be reimbursed.”⁷⁶ Beyond simply requiring the filling out of a form before deployment of resources, the Form itself is so comprehensive and complex that it requires a full breakdown of travel costs, equipment costs, commodity costs, and “other costs,” as well as a breakdown of every responding personnel and how much they are paid.⁷⁷ It bears noting that the Director of the Clinton County Office of Emergency Services states that when any department in his county responds to a mutual aid request across the border, there is no agreement for, nor expectation of, reimbursement.⁷⁸

Also noteworthy is that the Form has legal implications for its signatories. Section I states that the Form will, upon signing by both the requesting agency and assisting jurisdiction “constitute a legally binding contract for services to be provided.”⁷⁹ This exhaustive form, with potentially nerve-racking consequences, can hardly be expeditious enough to be warranted when only requesting resources for a localized incident.

What further delays a prompt response, and thereby all but precludes localized mutual aid, is the second phase in the operations manual, the “Mission Specific Preparation” phase. This phase entails “mobilization and dispatch of staff or teams, initial briefings, necessary arrangements for *visa and permits* and logistical provisions.”⁸⁰ Arrangement for visas and permits is a lengthy process that, in the current climate, would never happen quickly enough for requested resources to show up in enough time to be useful. To be effective emergency responders must, especially at the local level, be able to receive a dispatch, immediately gather the requested resources and personnel, and make their way to the scene. There is, no doubt, some specialized resources that are so incident specific that mobilization is impossible in a short time (i.e. the Federal Emergency Management Agency’s Urban Search and Rescue teams). Due to the complexity of such responses, the tasks the personnel will be requested to do, and the fact that in many scenarios the mutual aid resources are providing recovery services as opposed to disaster response services, such delays may be acceptable.⁸¹

76. *Id.* at 7.

77. *See* Northern Emergency Management Assistance Compact, Form IREQ-A, available at <http://www.nemacweb.org/wp-content/uploads/2014/10/NEMACIREQ-AForms2014.xlsx> (last visited Oct. 20, 2016).

78. Day Interview, *supra* note 24.

79. OPERATIONS MANUAL, *supra* note 74, at 7-8.

80. *Id.* at 8.

81. Of the five phases of emergency management, recovery is typically either fourth or fifth in the progression. *See* JACK HERRMANN, DISASTER RESPONSE PLANNING &

In NEMAC, though, the “Mission Specific Preparations” and “Mobilization” phases are the most pertinent, and simultaneously the most concerning aspects of NEMAC’s Operations Manual. Section 1 spells out that during the mobilization phase, the requesting agency is to “be prepared to coordinate with Federal Partners to facilitate cross-border movement” as well as to inform the responding agency “of any requirements associated with cross-border movements.”⁸² Section 3.4 provides that during the “Mission Specific Preparations Phase,” if there will be a border crossing, “the Requesting Jurisdiction should coordinate with federal border authorities to ensure they are aware of the situation and are prepared to expedite the crossing to the extent they are able to do so.”⁸³ What is missing from this directive, however, is how the Requesting Jurisdiction accomplishes this. Similarly, there is limited suggestion as to what type of documentation will be, or more importantly, should be required in order to cross the border.⁸⁴

What is also noticeably absent from the entire NEMAC framework is expediency. This Compact appears to be a model for large-scale responses and does not cater, nor provide guidance, to run-of-the-mill localized responses. While there is no doubt that there is a need for a framework facilitating organized and substantial responses, the vast majority of emergencies are relatively small in nature. The above case study illustrates that rapid responses are vital and small towns frequently need expeditious responses from agencies outside their district/jurisdiction, and sometimes outside their home country. The requesting and responding departments cannot be bogged down in a cost analysis before every mutual aid response; they must instead rely on the belief or expectation that they will be properly reimbursed when they return from their mission or, as in the case of Clinton County, expect no reimbursement whatsoever. That is not to say that pre-planning and agreements set forth in advance of the call for help are ill advised. Rather, the agreements need to have an element of flexibility, and trust that the responding agency will not overbill or send more than what is requested,

PREPAREDNESS: PHASES OF DISASTER 12 (2007), *available at* http://www.nydis.org/nydis/downloads/manual/NYDIS_Disaster_SC-MH_Manual_SectionI-Chapter1.pdf (last visited Oct. 23, 2016).

82. OPERATIONS MANUAL, *supra* note 74, at 8.

83. *Id.* at 15.

84. Note, however that the Operations Manual does state that a deploying team should be prepared to have, amongst other things travel documentation, including “passports or appropriate travel documents to include record of immunizations, if appropriate.” *Id.* at 16. However, this does not contemplate what happens when a responder does not have a passport, or any number of other contingencies, which is particularly likely in rapid, localized incident responses.

and then later ask for full reimbursement. Authors of an agreement or compact of the future would do well to bear in mind that the vast majority of cross-border emergency response requests will likely take the form of small responses to localized emergencies where quick and efficient mobilization is paramount to limiting loss of life or property.

IV. CURRENT BORDER-CROSSING METHOD FOR FIRST RESPONDERS

As was set forth earlier, mutual aid agreements are the primary method by which first responders quickly make entry into another country.⁸⁵ These mutual aid agreements are unique, and are not held to a national standard, which is particularly problematic because of the complex jurisdictional dynamic present in these types of responses. Specifically, almost every fire department responding across the border is a local governmental organization.⁸⁶ However, responsibility to secure the border by way of creating and staffing border-crossing locations falls upon the federal government.⁸⁷ This creates an interagency communication problem that requires specific knowledge of how to navigate the regulatory structure of both federal and state laws on border requirements, emergency responder requirements, and radio and telecommunication requirements.

Because the majority of these agreements are informal and are not required to meet any national standards, they run the risk of lacking provisions dealing with liability and credential recognition. If these essential provisions are not included in a mutual agreement, there may be a chilling effect on potential first responders. A national standard, negotiated jointly between Canada and the U.S., would help fill in the gap and ensure that first responders are protected from civil and criminal liability when responding across national boundaries. It is vital that this standard be a national one, given the role that border protection takes on in both Canada and the U.S. That is, because all cross-border mutual responses have to go through federally administered border-crossings,

85. See *The State of Northern Border Preparedness: A Review of Federal, State, and Local Coordination Before the Subcomm. on Emergency Preparedness, Response and Comm'n of the H. Comm. on Homeland Sec.*, 112th Cong. 4-6 (2011) (written statement of Andrew Velasquez III, Region V Adm'r, FEMA).

86. In New York, fire districts can only be authorized and created by the town(s) in which the fire department wishes to operate. N.Y. Town Law § 170 (Consol. 2015).

87. *Immigration Enforcement Along U.S. Borders and at Ports of Entry*, PEW CHARITABLE TRUSTS (Feb. 6, 2015), available at <http://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2015/02/immigration-enforcement-along-us-borders-and-at-ports-of-entry> (last visited Oct. 24, 2016).

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state-by-state or even regional plans would be insufficient to fix this already broken model of trans-national emergency response. That being said, any national standard that is developed should be done with the input of local agencies that are the initial responders when the tones are dispatched for an emergency. Without the involvement of local agencies, who understand and can communicate the intricacies of how responses are dispatched, organized, and executed, any national plan will be severely lacking. Given the varying sizes and types of departments that exist throughout the U.S.,⁸⁸ a national policy should include a tiered approach in which the variability of the size and types of departments is contemplated. Such a tiered policy would take into account the differing nature of volunteer and career departments, as well as differences in the available resources that each department can call upon without the use of mutual aid.

The national standard must also include details on how first responder agencies along the border are to screen applicants for membership in their organizations. Any persons coming into the U.S. or Canada in such a rapid fashion must not have any serious red flags on their record. The Director of the Clinton County Office of Emergency Services echoed this sentiment as a means to avoid delays at the border similar to the Rouses Point fire case study discussed above.⁸⁹ This can be accomplished through the use of the technology discussed below, or simply through more stringent background checks on firefighter applicants. A wise choice would entail some combination of the elements of both technology and more comprehensive background checks.

V. THREATS POSED TO NATIONAL SECURITY BY CROSS-BORDER EMERGENCY RESPONSE IN THE CURRENT ENVIRONMENT

Fire departments, as a general rule, do not apply particularly rigorous standards to background checks of prospective members. According to this author's research, there is no uniform policy throughout the U.S. that mandates what a fire department, or any other type of first responder organization must review in determining an applicant's qualifications. In the historically less strict volunteer departments where members do not directly receive taxpayer dollars in the form of paychecks, standards for background checks are completely left up to the individual state. Only in December of 2014 did New York law require

88. Think of the size of Rouses Point Volunteer Fire Department in rural upstate New York versus Detroit, Michigan.

89. Day Interview, *supra* note 24.

that prospective volunteer firefighters undergo criminal history background checks.⁹⁰ Even these checks only delved into the applicant's criminal history as related to convictions in which the applicant was required to register as a sex offender or convictions for arson.⁹¹

The lack of any uniform standard for background checks poses a unique problem for fire departments in rural border regions in the U.S (and likely Canada as well). Due to the location of these departments, and the correspondingly low populations from which to draw volunteers from, they will likely be called upon to assist departments in other parts of their state or neighboring states. More importantly, they may be called upon to respond to emergencies across the border in Canada, or vice versa. This would logically lead one to believe that they would conduct probing background checks, including searches into the Terrorist Screening Database. However, only five agencies have access to this database, none of which are local police departments, which now run the majority of background checks for fire departments.⁹² As the U.S. Customs and Border Protection Agency (CBP) is one of the five agencies allowed access to this database, it would be prudent for background checks of volunteers in these border areas to be done in conjunction with a CBP review of the Terrorist Screening Database.⁹³ This is one step to ensuring that when emergency responders are called to respond across the border, there is a lower risk that a known terrorist will be able to sneak in.

Simply stated, at this point there is no uniform national policy for guaranteeing the qualifications (in terms of criminal background) of emergency responders. This poses a very real threat to U.S. security if the same practices hold true in Canadian fire departments. As the law stands now, even known terrorists could potentially become firefighters in the U.S. When the call rings out for cross-border assistance, they could cross the border and disappear into Canada, or vice-versa. This is an unacceptable practice that must be remedied in order to maintain the highest degree of national security and to prevent terrorists from sneaking

90. See *Non-Fingerprint Background Checks – Volunteer Firefighters*, FIREMEN'S ASSN' OF THE ST. OF N.Y. (Dec. 2014) available at http://www.fasny.com/pdfs/Non-Fingerprint_BGchecks.pdf (last visited Oct. 24, 2016).

91. *Id.*

92. See *Frequently Asked Questions*, TERRORIST SCREENING CENTER (Sept. 25, 2015), available at <https://www.fbi.gov/about-us/nsb/tsc/terrorist-screening-center-frequently-asked-questions> (last visit Oct. 24, 2016) [hereinafter TERRORIST SCREENING CENTER]; See Paul Lepore, *Everything You Need to Know About Background Investigations*, FIRE LINK, available at <http://firelink.monster.com/training/articles/1769-everything-you-need-to-know-about-background-investigations> (last visited Oct. 24, 2016).

93. TERRORIST SCREENING CENTER, *supra* note 92.

into either country.

The November 2015 attacks in Paris prove that terrorists can, and will, exploit any avenues possible in order to gain access into a country in which they intend to carry out attacks. In one of those tragic attacks, a member of the Islamic State of Iraq and the Levant (ISIS) snuck into Europe posing as a refugee from the Syrian crisis.⁹⁴ The U.S. only realized the similarly exploitable nature of our borders as means for terrorist entry after the September 11 attacks.⁹⁵ Ten years later, the Commissioner of the CBP found that the bigger threat of cross-border terrorist entry into the U.S. came from Canada, and not Mexico as many had speculated.⁹⁶ He noted that there were more cases of persons trying to cross the U.S.-Canada border with “suspected . . . alliances with terrorist organizations” than there were similarly affiliated persons trying to cross the U.S.-Mexico border.⁹⁷ Another report notes that none of the jihadist plots that have targeted the U.S. have had ties to a U.S.-Mexico border link.⁹⁸

It is apparent the terror threat to the U.S. from Canada is far more pressing than any perceived threat emanating from the United States’ southern border.⁹⁹ While there has never been a reported stop of a person suspected of terrorist ties by customs officials along the U.S.-Mexico border, there have been multiple stops of such persons along the northern border.¹⁰⁰ Some even suspect that there may be terrorist personnel stationed in Canada whose sole responsibility is to generate fake passports and other documentation for Al Qaeda.¹⁰¹

94. Christiane Amanpour & Thom Patterson, *Passport Linked to Terrorist Complicates Syrian Refugee Crisis*, CNN (Nov. 15, 2015), available at <http://www.cnn.com/2015/11/15/europe/paris-attacks-passports/> (last visited Oct. 22, 2016).

95. Bennie G. Thompson, *A Legislative Prescription for Confronting 21st-Century Risks to the Homeland*, 47 HARV. J. ON LEGIS. 277, 309 (2010).

96. See Colin Freeze, *U.S. Border Chief Says Terror Threat Greater from Canada than Mexico*, GLOBE AND MAIL (May 18, 2011), available at <http://www.theglobeandmail.com/news/politics/us-border-chief-says-terror-threat-greater-from-canada-than-mexico/article580347/> (last visited Oct. 22, 2016).

97. *Id.*

98. See Scott Stewart, *Examining the Terrorist Threat from America’s Southern Border*, STRATFOR: SECURITY WEEKLY (July 24, 2014), available at <https://www.stratfor.com/weekly/examining-terrorist-threat-americas-southern-border> (last visited Oct. 22, 2016).

99. *Id.*

100. See Garrett M. Graff, *Fear Canada: The Real Terrorist Threat Next Door*, POLITICO, (Oct. 16, 2014) available at <http://www.politico.com/magazine/story/2014/10/fear-canada-not-mexico-111919> (last visited Oct. 22, 2016).

101. Oriana Zill, *Crossing Borders: How Terrorists Use Fake Passports, Visas, and Other Identity Documents*, PBS FRONTLINE, available at <http://www.pbs.org/wgbh/pages/frontline/shows/trail/etc/fake.html> (last visited Oct. 22,

The aforementioned problem is confounded by Canada's immigration policies wherein persons claiming refugee status are not detained while their status as such is adjudicated.¹⁰² Indeed, Canadian refugee claimants can travel wherever they please within Canada while their status is being determined.¹⁰³ As a result, thousands of these refugee-seeking claimants never appear for their court dates.¹⁰⁴ Although often overly exaggerated, differences in U.S. and Canadian immigration policies pose problems for both countries in maintaining heightened security. This supports and demonstrates the need for the U.S. and Canada to analyze, review, and/or implement protocols to ensure that there are no avenues that terrorists can exploit to unlawfully enter these countries, such as through the use of emergency response vehicles. If entry is made into one of the two countries, it increases the risk that entry will be made into the neighboring country as well. When observing the security issues present along the northern U.S. border, it becomes apparent that increased vigilance is needed to safeguard against possible terrorist exploitation of emergency cross-border mutual aid.

As stated earlier, one problem that exists and poses a threat to both Canada and the U.S. is the relaxed standards when it comes to background checks for emergency responders. However, there is an understandable basis for this. Departments have been somewhat lethargic in implementing upgraded background checks because they are significantly more expensive than basic ones. Additionally, heightened scrutiny may result in more applicants being ineligible for service. Combined, this is a very daunting scenario for departments that are squeezed for funding and similarly are experiencing low volunteer rates.¹⁰⁵ The table below, from the National Volunteer Fire Council (NVFC), illustrates this trend in low volunteerism¹⁰⁶:

2016).

102. Steve de Eyre, *North American Settlement: The Prospects for a North American Security Perimeter: Coordination and Harmonization of United States and Canadian Immigration and Refugee Law*, 35 CAN.-U.S. L.J. 181, 190 (2011).

103. *Id.*

104. *Id.*

105. See NAT'L VOLUNTEER FIRE COUNCIL, VOLUNTEER FIRE SERVICE FACT SHEET, available at http://www.masc.sc/SiteCollectionDocuments/Risk%20Management/Fire_Service_Fact_Sheet_2015.pdf (last visited Oct. 18, 2016).

106. *Id.* at 2.

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Year	Number of Volunteer Firefighters	Year	Number of Volunteer Firefighters
1984	897,750	1999	785,250
1985	839,450	2000	777,350
1986	808,200	2001	784,700
1987	816,800	2002	816,600
1988	788,250	2003	800,050
1989	770,100	2004	795,600
1990	772,650	2005	823,650
1991	771,800	2006	823,950
1992	805,300	2007	825,450
1993	795,400	2008	827,150
1994	807,900	2009	812,150
1995	838,000	2010	768,150
1996	815,500	2011	756,400
1997	803,350	2012	783,300
1998	804,200	2013	786,150

The information put out by the NVFC also shows that smaller communities rely heavily on volunteer firefighters.¹⁰⁷ While this is certainly laudable, it begs the question of whether those departments will have the funds (or applicant base) to run extensive background checks to ensure that they are accepting candidates who do not pose a threat to national security. Where they do not have such funds, they must rely on less expensive background checks because more expensive ones would either a) reduce the available resources for life-saving tools and equipment, or b) reduce their qualified applicant pool.

The lack of a national policy on background checks, much less an international policy regarding the same, leaves open the possibility that terrorists could be smuggled into the U.S. or Canada on fire apparatus or other emergency vehicles. A key component of any future legislation or treaty that concerns mutual aid between the U.S. and Canada should be a policy that ensures all those emergency responders who may be called upon to cross the border have undergone thorough background checks to ensure their suitability for such travel. One way in which this can be accomplished would be by bringing the CBP in to participate in the screening of new applicants. With CBP's access to the Terrorist Screening Database, departments would, at a minimum, be able to

107. *Id.* at 5.

identify and exclude those persons known, or suspected, to be terrorists or who may have ties to terrorist organizations.

VI. AVAILABLE TECHNOLOGY TO EXPEDITE BORDER CROSSING

There is ample technology, and in several places the infrastructure already exists which can be leveraged to expedite border crossing for emergency responders while maintaining heightened vigilance. All of the following technologies can be taken and adapted to fit the needs of emergency responders and the vehicles in which they cross borders. Utilizing modified versions of these technologies would no doubt be costly, but it is necessary, as described earlier, to implement a uniform national standard to keep U.S. and Canadian borders secure. As noted above, fire department background checks are notoriously superficial, and utilization of one of the below technologies will reduce the likelihood that an emergency responder, unknown to be dangerous, will utilize a cross-border emergency response to gain access into the U.S. or Canada.

Presently, many border crossing locations have license plate readers that scan a crosser's license plate and pull up information on the CBP officers' computer regarding the crosser's previous travel history.¹⁰⁸ The computers "analyze passage histories" and determine whether the crosser has "suspicious travel patterns."¹⁰⁹ If the computer does alert the CBP official to suspicious patterns, the crosser may be subject to more strictly scrutinized questioning and possibly a secondary inspection.¹¹⁰ When pulled over for secondary inspection, additional information is gathered and entered into the database in which the CBP officer originally viewed information regarding the crossers' license plates.¹¹¹ This database uses not only information acquired by CBP from prior crossings, but also integrates data "sourced up from a number of [other] law enforcement agencies."¹¹²

Additionally, at every U.S. border crossing location (and many Canadian crossings), there is an RFID card reader that can scan U.S.

108. EZBORDERCROSSING, *What They Know About You*, available at <http://www.ezbordercrossing.com/the-inspection-experience/what-they-know-about-you/> (last visited Oct. 18, 2016)

109. *Id.*

110. *Id.*

111. *Id.*

112. Daniel Terdiman, *How Tech Protects the World's Busiest Border Crossing*, CNET (Jul. 18, 2012), available at <http://www.cnet.com/news/how-tech-protects-the-worlds-busiest-border-crossing/> (last visited Nov. 13, 2016).

Passport cards, border-crossing cards, and SENTRI cards.¹¹³ This information is then pulled up on the computer for the CBP officer to review.¹¹⁴ Each of the options in which RFID cards are used require that the person wishing to cross the border using these cards obtain clearance ahead of time through an application process.¹¹⁵

SENTRI is a part of the Trusted Travelers group of programs administered by CBP.¹¹⁶ SENTRI cardholders must undergo a “rigorous background check and in-person interview” before they can utilize the benefits of the program.¹¹⁷ Once given access, the program expedites travel through U.S. Customs locations along the Southern border.¹¹⁸ SENTRI cardholders are allowed through dedicated lanes and generally enjoy reduced inspection times.¹¹⁹ SENTRI cardholders also are allowed to use NEXUS (discussed below) lanes when entering the U.S. from Canada.¹²⁰ Additionally, they may use the Global Entry (discussed below) kiosk when coming into the U.S. by air.¹²¹ According to a private company specializing in immigration visa applications, SENTRI card holders only spend about ten seconds at the border (without traffic).¹²²

A similar program called NEXUS is in operation along the northern border. Use of this program also requires an in-depth background check,

113. *Id.*; see WHATCOM COUNCIL OF GOVERNMENTS & BORDER POLICY RESEARCH INSTITUTE, A BUSINESS CASE FOR INCREASING RFID AT THE CANADA-U.S. LAND BORDER 3 (2014), available at http://www.wvu.edu/bpri/files/2015_RFID_Business_Case_WCOG.pdf (last visited Oct. 23, 2016) [hereinafter WCOG BORDER POLICY RESEARCH INSTITUTE].

114. WCOG BORDER POLICY RESEARCH INSTITUTE, *supra* note 112.

115. U.S. DEP'T OF STATE, *Bureau of Consular Affairs, Passport Card*, available at <https://travel.state.gov/content/passports/en/passports/information/card.html> (last visited Oct. 24, 2016); U.S. DEP'T OF STATE, *Bureau of Consular Affairs, Border Crossing Card*, available at <http://travel.state.gov/content/visas/en/visit/border-crossing-card.html> (last visited Oct. 24, 2016); U.S. DEP'T OF HOMELAND SEC., *Customs and Border Prot., SENTRI Card*, available at <http://www.cbp.gov/travel/trusted-traveler-programs/sentri/card> (last visited Oct. 24, 2016).

116. U.S. DEP'T OF HOMELAND SEC., *Customs and Border Prot., Secure Electronic Network for Travelers Rapid Inspection*, available at <http://www.cbp.gov/travel/trusted-traveler-programs/sentri> (last visited Oct. 24, 2016).

117. *Id.*

118. *Id.*

119. U.S. DEP'T OF HOMELAND SEC., *Customs and Border Prot., Benefits of SENTRI*, available at <http://www.cbp.gov/travel/trusted-traveler-programs/sentri/benefits-sentri> (last visited Oct. 22, 2016).

120. *Id.*

121. *Id.*; U.S. DEP'T OF HOMELAND SEC., *Customs and Border Prot., Global Entry*, available at <http://www.cbp.gov/travel/trusted-traveler-programs/global-entry> (last visited Oct. 22, 2016).

122. IMMIGRATION VISA & TRAVEL, *SENTRI PASS FAQs*, available at <http://usa.immigrationvisaforms.com/travel/sentri-pass-faqs> (last visited Oct. 22, 2016).

similar to the SENTRI program.¹²³ Using NEXUS allows for “expedited processing when entering the United States and Canada”¹²⁴ and also includes the ability to use the Global Entry system when entering the U.S. by air.¹²⁵ An RFID chip in the NEXUS card contains information about the travelers, which is then called up onto a screen for the CBP officer to review as the traveler approaches the inspection booth.¹²⁶ Pictures of every traveler associated with each card are pulled up for the CBP officer to review, and to ensure that in fact those are the persons in the vehicle.¹²⁷

In order to use the NEXUS lane, every person in the vehicle must be a member of the NEXUS program.¹²⁸ The Canada Border Services Agency (CBSA) states that when crossing at a land border using NEXUS it should take only seconds to clear through inspection.¹²⁹ CBSA also reports that when members use the kiosks in airports the process is completed using, amongst other things, biometrics to check the identity of the traveler.¹³⁰ A representative of the CBSA stated that when people apply for NEXUS membership they capture an image of the applicant’s iris, and then “when [they are] processed through the [airport] kiosk it would confirm [their] identity by using [their] iris . . .”¹³¹ While the processing at an airport is a little longer than processing at a land crossing, it still only takes a few minutes.¹³² It bears noting, though, that NEXUS airport kiosks and lanes at land crossings only exist at limited locations.¹³³ There are only nine airports (all of which are in Canada) and nineteen land crossings that utilize NEXUS kiosks.¹³⁴

Another component of the Trusted Travelers apparatus is the Free

123. *Types of Documentation*, EZBORDERCROSSING, available at <http://www.ezbordercrossing.com/the-inspection-experience/documentation-needed-to-cross-border/types-of-documentation/#.VtejBc6S1tI> (last visited Oct. 22, 2016).

124. U.S. DEP’T OF HOMELAND SEC., *Customs and Border Prot., NEXUS*, available at <http://www.cbp.gov/travel/trusted-traveler-programs/nexus> (last visited Oct. 22, 2016).

125. U.S. DEP’T OF HOMELAND SEC., *Customs and Border Prot., Benefits of NEXUS*, available at <http://www.cbp.gov/travel/trusted-traveler-programs/nexus/benefits-nexus> (last visited Oct. 21, 2016).

126. Joanne Will, *Life in the Fast Lane: Should I get a NEXUS Card?*, THE GLOBE AND MAIL (Dec. 25, 2013), available at <http://www.theglobeandmail.com/globe-drive/culture/commuting/life-in-the-fast-lane-should-i-get-a-nexus-card/article16090274/> (last visited Oct. 21, 2016).

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. Will, *supra* note 126.

132. *Id.*

133. *Id.*

134. *Id.*

and Secure Trade (FAST) program. This program is only for border crossers engaged in inter-border commerce (i.e. trucks carrying goods across the border) between the United States and Canada and the United States and Mexico.¹³⁵ Participation in the program is limited because in order to qualify to hold a FAST card, every aspect of the supply chain for the goods being carried has to be vetted by CBP using the Customs-Trade Partnership Against Terrorism (C-TPAT).¹³⁶ The Partnership is comprised of companies that have signed a pledge to “work with CBP to protect the supply chain, identify security gaps, and implement specific security measures and best practices.”¹³⁷ The member companies are required to spell out the specific security measures they have in place and to answer many questions from C-TPAT.¹³⁸ If they are cleared by C-TPAT, the company is considered low-risk and the trucks carrying their goods are less likely to be pulled over and examined at the border.¹³⁹

The eligibility requirements for participation in FAST do not stop with inspections and vetting of the companies in the supply chain, they also apply to the actual truck drivers.¹⁴⁰ Driver eligibility is twofold with continuous vetting and renewal vetting.¹⁴¹ Continuous vetting occurs every twenty-four hours and is comprised of searches of U.S. law enforcement databases to ensure that the drivers maintain low-risk status.¹⁴² The second component is renewal vetting, which is comprised of another search of law enforcement databases combined with “in-person interviews, document reviews, and fingerprint identification.”¹⁴³ This renewal vetting occurs once every five years.¹⁴⁴ FAST currently has more than 78,000 certified drivers and C-TPAT boasts more than 10,000

135. *Free and Secure Trade Program – Continued Driver Eligibility 2* DEPARTMENT OF HOMELAND SECURITY, OFFICE OF INSPECTOR GENERAL (OIG-12-84) (May 2012) [hereinafter *OIG Report*].

136. U.S. DEP’T OF HOMELAND SEC., *Customs and Border Prot., FAST: Free and Secure Trade for Commercial Vehicles*, available at <https://www.cbp.gov/travel/trusted-traveler-programs/fast> (last visited Oct. 18, 2016). [hereinafter *FAST*] (“CBP routinely conducts on-site visits to domestic and foreign C-TPAT member facilities to evaluate and validate their-supply-chain measures”).

137. U.S. DEP’T OF HOMELAND SEC., CUSTOMS AND BORDER PROT., *C-TPAT: CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM*, available at <http://www.cbp.gov/border-security/ports-entry/cargo-security/c-tpat-customs-trade-partnership-against-terrorism> (last visited Oct. 18, 2016)

138. *Id.*

139. *OIG Report*, *supra* note 135 at 2; *e.g. id.*; *FAST*, *supra* note 136.

140. *OIG Report*, *supra* note 135, at 2.

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

member companies.¹⁴⁵

Finally, CBP began field testing a technology called the Biometric Exit Mobile (BE-Mobile) in July 2015 to enable law enforcement to get real-time biometric data on outgoing foreign nationals, as well as to ensure that persons who entered on temporary visas leave when they are supposed to.¹⁴⁶ Through the program CBP officers will carry handheld mobile device to collect fingerprints from persons leaving the country.¹⁴⁷ These fingerprints will then be compared against fingerprints that were “collected when the traveler entered the United States.” This technology is only being used with regards to non-U.S. citizens.¹⁴⁸

VII. RECOMMENDATIONS

Any plan to expedite border crossing for emergency responders must have significant input from the very first-responders it will be affecting. As the most frequent cross-border emergency responders are local agencies authorized by towns, counties, or cities, these governmental entities must be included in the discussions that frame border crossing plans. They cannot, however, be left to do this alone, for the duty of border protection is entrusted to the federal governments of the U.S. and Canada. Additionally, the U.S. federal government holds the resources that would be able to fund the implementation of the technology for both the border crossing locations as well as the Department of Homeland Security grants that give money to agencies to purchase the technology or background checks necessary to comply with a nationalized plan.

In order to facilitate expeditious border crossing for emergency responders while continuing to maintain heightened security vigilance in a post-9/11 era, it is imperative that the federal governments of both the U.S. and Canada implement broad national policies that leverage border-crossing infrastructures already in place. The plan(s) *must* be national, though, because of the potential for multi-state cross-border responses. Uniformity is paramount to the success of maintaining security and efficiency.

145. U.S. DEP'T OF HOMELAND SEC., *Customs and Border Prot., Fact Sheet: Free and Secure Trade Program (FAST)*, available at https://www.cbp.gov/sites/default/files/documents/fof_fast_final_file_3.pdf (last visited Oct. 23, 2016).

146. U.S. DEP'T OF HOMELAND SEC., *Customs and Border Prot., Fact Sheet: Biometric Exit – Mobile Air Project*, available at http://www.cbp.gov/sites/default/files/documents/BE-Mobile_Fact%20Sheet.pdf (last visited Oct. 23, 2016).

147. *Id.*

148. *Id.*

Use of technology that relies on RFID scanners is an intelligent jumping-off point to speed crossings at the border. As stated above, every northern U.S. border crossing location already employs RFID readers to scan NEXUS cards, SENTRI cards, and enhanced drivers licenses.¹⁴⁹ Using RFID readers will expedite border crossing by allowing customs officials to pull up pictures and pedigree information on passengers approaching the checkpoint. When the vehicle reaches the checkpoint, all the officer must do is verify that every picture matches up with someone on board the vehicle. As soon as that is completed, the officer can wave the vehicle through. This entire process could take as little as ten seconds.¹⁵⁰

Use of RFID technology alone, while certainly serving the goal of increasing speed and efficiency for border crossing, does not necessarily by itself maintain heightened security. Implementation of a screening process for all emergency responders that have the potential to cross the border must be a part of the national policies. Two of the aforementioned technologies may be useful in achieving this security: NEXUS and FAST. As most emergency response departments are public agencies, access by the public to them may not be strictly scrutinized making it an avenue by which people may slip dangerous items onto cross-border emergency response vehicles. Accordingly, use of a program like FAST, which utilizes C-TPAT and routine CBP visits to the entire supply-chain involved in the manufacture of the goods being transported across the border is a potential solution to maintaining the secure integrity of cross-border emergency response apparatus. This, used in conjunction with a type of NEXUS program, which applies rigorous background checks to applicants, could result in an expeditious yet secure method to clear emergency responders through the border.

Further technological developments and integration will further expedite border crossing. For instance, use of a system akin to the highway toll EZ-Pass system in which each responding apparatus had a unique identifying tag affixed to its front windshield (or other reader-accessible location) would increase efficiency and speed. However,

149. Enhanced driver's licenses are state-issued cards that provide "proof of identity and U.S. citizenship." They are also presently available in four Canadian provinces. U.S. DEP'T OF HOMELAND SEC., CUSTOMS AND BORDER PROT., ENHANCED DRIVERS LICENSES: WHAT ARE THEY?, available at <http://www.dhs.gov/enhanced-drivers-licenses-what-are-they> (last visited Oct. 17, 2016) ("The top 39 land ports of entry, which process more than 95 percent of land border crossings, are equipped with RFID technology that helps facilitate travel by individual[s] presenting [Enhanced Drivers Licenses] or one of the other RFID-enabled documents").

150. IMMIGRATION VISA & TRAVEL, *supra* note 122.

based on the nature of most emergency response vehicles in which no one individual is typically assigned to the same vehicle day in and day out, there would have to be some way for passengers to key into the transponder so when the vehicle approaches the border, the border patrol official knows who is on board.

CONCLUSIONS

The United States and Canada used to boast that the line dividing the two countries was the longest undefended border in the world.¹⁵¹ Slowly, over time, the notion of the undefended border eroded, and after the deadliest attack on American soil¹⁵² occurred on September 11, 2001, the game was forever changed. Initial responses to the 9/11 attacks suggested (incorrectly) that some of the hijackers had made their way into the U.S. via the (perceived) “porous Canadian border.”¹⁵³ Despite the incorrect reactions regarding how the hijackers got into the U.S., the damage had already been done and security along the border increased. This, however, is not necessarily a negative development because the largest threat to terrorist infiltration into America comes, not from the U.S.-Mexico border, but rather from the northern border with Canada.¹⁵⁴

The Department of Homeland Security reports that there has been a 500% increase in Border Patrol agents along the northern border since 9/11.¹⁵⁵ This is certainly a laudable accomplishment, but there have been far reaching implications that have, amongst other things, affected cross-border emergency response. Stricter border security has made it more difficult, and more importantly, less expeditious, for mutual aid responses to occur across the border.

While there has been appreciable progress made in the past fifteen years to increase coordination and cooperation between the U.S. and Canada for securing the border, additional steps must be taken to assist emergency responders in carrying forth their charge of saving life and property. Any sort of solution to this problem cannot be rooted in

151. *The United States-Canadian Border: Undefended no More*, ECONOMIST (Nov. 8, 2014), available at <http://www.economist.com/news/americas/21631103-violence-ottawa-has-thickened-once-seamless-border-souring-mood-both> (last visited Oct. 18, 2016).

152. *See id.*

153. Donald E. Abelson, *National Interest or Self-Interest?: Advocacy Think Tanks, 9/11, and the Future of North American Security*, in *GAME CHANGER: THE IMPACT OF 9/11 ON NORTH AMERICAN SECURITY* 175, 180 (Jonathan Paquin & Patrick James ed., 2014).

154. Freeze, *Supra* note 96.

155. U.S. DEP'T OF HOMELAND SEC., *Customs and Border Prot., Securing and Managing Our Borders*, available at <http://www.dhs.gov/securing-and-managing-our-borders> (last visited Oct. 18, 2016).

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individual state/province or conglomeration of state/province mutual aid plans. Involving federal, state, and local agencies is paramount to the success of any sort of plan to expedite cross border mutual aid. In addition to the fact that the federal government manages all border crossing and security, they also hold the majority of the funds to implement technological measures to improve border-crossing speed. It is also important that states and local agencies be included too as they are the actual ones engaged in the cross-border responses.

As was discussed above, the solution to the problem of delayed cross-border emergency response must be multi-faceted, including reforms to the form/type of background checks that are undertaken on applicants to emergency response agencies that are called upon for cross-border mutual aid. Additionally, technology must be leveraged to ensure that emergency responders who enter another country are accounted for and return to their home country when the incident comes to an end, or their services are no longer needed. However, this does not need to be an expensive undertaking though as the technology already exists and can be leveraged to facilitate expedient and secure crossing for critical life and property saving resources.

Resolution of the existing problem will take coordination between many factions of both the U.S. and Canadian governments. This life-and-death matter needs careful and thoughtful planning to ensure that those residing along the border receive adequate emergency services. Accordingly, a plan must not be rushed out without foresight into possible repercussions that could continue to negatively affect cross-border responses.