

# Report for Congress

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## **The Department of Homeland Security: State and Local Preparedness Issues**

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# The Department of Homeland Security: State and Local Preparedness Issues

## Summary

The House and Senate proposals for a new Department of Homeland Security would make the new department responsible for coordinating activities with, and providing assistance to, state and local governments to ensure adequate preparedness for possible terrorist attacks. H.R. 5005 and S. 2452 would place these functions within the Emergency Preparedness and Response division (EPR), which would integrate existing agencies with functions relating to state and local preparedness, such as:

- ! Federal Emergency Management Agency (FEMA);
- ! Office for Domestic Preparedness (DOJ);
- ! National Domestic Preparedness Office (FBI);
- ! Office of Emergency Preparedness (HHS), including the National Disaster Medical System and Metropolitan Medical Response System; and,
- ! National Pharmaceutical Stockpile (HHS).

Congress will likely debate a number of issues as it considers H.R. 5005 and S. 2452, including how best to structure the department to act as a single point of contact for state and local officials. The Administration states that this is one of its primary goals for the new department. As part of this issue, Congress will consider the authority and duties of an Office of State and Local Government Coordination.

Another issue is how the department will set standards and evaluate state and local preparedness. The Administration proposes that the new department establish standards for responding to weapons of mass destruction (WMD) incidents and developing a nationwide training and evaluation system. Congress might consider the degree of authority the new department should have to encourage or require standards and to evaluate state and local preparedness.

Congress may also be asked to consider the way in which the department will integrate training programs from different agencies. Administration officials have stated that first responder training will not be done in a law enforcement context, which concerns some policymakers and emergency managers. Congress could fully or partially integrate training programs, or it could establish a commission to further study the issue.

A final issue is whether integrating FEMA into the new department would impact state and local preparedness for natural disasters. Some observers argue that FEMA should remain an independent agency so that its effectiveness will not be encumbered by a larger department. Other observers, however, contend that FEMA's resources should be used by the new department to better prepare states and localities for all disasters, including terrorist attacks.

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# The Department of Homeland Security: State and Local Preparedness Issues

## Introduction

Both H.R. 5005 and S. 2452 propose a new Department of Homeland Security (DHS), which would have a number of responsibilities relating to state and local preparedness for potential terrorist attacks. This report discusses selected state and local preparedness issues that specifically pertain to the proposed Emergency Preparedness and Response Division of the new department.<sup>1</sup> The report does not, however, discuss certain issues, such as the impact of integrating selected offices from the Department of Health and Human Services (HHS) into a new DHS,<sup>2</sup> and the degree of authority the DHS would need to effectively evaluate state and local assistance programs.

## Overview of Proposed Department Functions

H.R. 5005 (as passed by the House on July 26, 2002) and S. 2452 (as agreed to by the Senate Governmental Affairs Committee on July 25, 2002) would require the Secretary of Homeland Security (DHS) to coordinate activities with, and provide assistance to, state and local governments to ensure adequate preparedness for possible terrorist attacks.<sup>3</sup> The DHS Secretary would be responsible for administering grant programs for state and local first responders, including firefighters, emergency medical personnel, law enforcement, and related personnel.<sup>4</sup>

The Administration recommended placing these functions in the Emergency Preparedness and Response Division (EPR), which would integrate several existing agencies with functions relating to state and local preparedness, including.<sup>5</sup>

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<sup>1</sup>This report uses the term “division” generically to refer to the various administrative units proposed in H.R. 5005 and S. 2452. The bills, however, use such terms as division, directorate, and office.

<sup>2</sup>The House and Senate bills propose transferring from HHS to DHS the Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System.

<sup>3</sup>H.R. 5005 (as passed by the House on July 26, 2002), sec. 102(c), sec. 501; and S. 2452 (as agreed to by the Senate Governmental Affairs Committee on July 26, 2002), sec. 134(b).

<sup>4</sup>See H.R. 5005 (as passed), sec. 2(6).

<sup>5</sup>H.R. 5005 (as introduced), sec. 502.

- ! Federal Emergency Management Agency (FEMA)—Administers a range of planning, training, equipment, and exercise programs for states and localities;<sup>6</sup>
- ! Office for Domestic Preparedness (DOJ)—Offers planning assistance, equipment grants, and training for responding to weapons of mass destruction (WMD) incidents; training is offered in a law enforcement context;<sup>7</sup>
- ! National Domestic Preparedness Office (FBI)—Acts as an information clearinghouse to assist state and local responders with planning, training, equipment, and exercise needs necessary to respond to WMD incidents;<sup>8</sup>
- ! Office of Emergency Preparedness and the National Disaster Medical System (HHS)—Assists state and local governments with planning for public health emergencies, including bioterrorism, and coordinates federal medical services during disaster response.<sup>9</sup>
- ! Metropolitan Medical Response System (HHS)—Seeks to coordinate the efforts of local law enforcement, fire, hazardous materials, EMS, hospital, public health and other personnel to improve response capabilities in the event of a WMD incident;<sup>10</sup>
- ! National Pharmaceutical Stockpile (HHS)—The stockpile stands ready for immediate deployment to any U.S. location in the event of a terrorist attack involving a biological toxin or chemical agent.<sup>11</sup>

The Senate Committee on Governmental Affairs agreed with the President and located those functions in the EPR division.<sup>12</sup> The House included most of those functions in the EPR division, but it placed the Office for Domestic Preparedness (DOJ) and National Domestic Preparedness Office (FBI) in the Border and Transportation Security Division rather than the EPR division.<sup>13</sup>

Among the activities H.R. 5005 and S. 2452 propose for the EPR division are providing training and equipment to first responders, developing interoperable communications systems, and coordinating threat alerts to state and local governments. Both bills also propose an Office of State and Local Government

<sup>6</sup>The Federal Emergency Management web site is: [<http://www.fema.gov>].

<sup>7</sup>The Office of Domestic Preparedness web site is: [<http://www.ojp.usdoj.gov/odp/>].

<sup>8</sup>The National Domestic Preparedness Office web site is: [<http://www.ndpo.gov/>].

<sup>9</sup>The Office of Emergency Preparedness web site is: [<http://ndms.dhhs.gov/>].

<sup>10</sup>The Metropolitan Medical Response System web site is: [<http://www.mmrs.hhs.gov/>].

<sup>11</sup>For information on the National Pharmaceutical Stockpile, see: [<http://www.cdc.gov/nceh/nps/default.htm>].

<sup>12</sup>S. 2452 (as agreed to), sec. 134(c).

<sup>13</sup>H.R. 5005 (as passed), sec. 402(5), (6), and (7), and sec. 502. Also see sec. 506, added by H.Amdt. 575 (Young), agreed to July 25, 2002.

Coordination, which could be charged with coordinating departmental activities relating to states and localities, and assessing state and local needs. Neither H.R. 5005 nor S. 2452 incorporates the Administration proposal that the EPR division support states and localities by establishing training standards, developing a national training and evaluation system, and streamlining grant applications.<sup>14</sup>

This report discusses the following issues that have arisen as Congress debated the structure and responsibilities of the new department:

1. How can the department best be structured to act as a single point of contact for state and local officials?
2. How will the department set standards and evaluate state and local preparedness?
3. How will the new EPR division integrate training programs from different agencies? And,
4. What impact would the integration of FEMA into the DHS have on state and local preparedness for natural disasters?

## Issues Affecting State and Local Governments

H.R. 5005 and S. 2452 call attention to a number of issues related to state and local preparedness. This section is not a comprehensive discussion of relevant issues, but rather discusses selected issues pertaining to state and local preparedness and the proposed EPR division.

### Single Department to Coordinate Assistance

The Administration proposal says that the DHS “would give state and local officials one primary contact instead of many, and would give these officials one contact when it comes to matters related to training, equipment, planning, exercises and other critical homeland security needs.”<sup>15</sup> At present, grants and training programs for first responders are offered by agencies within the Departments of Defense, Health and Human Services, and Justice, and the Federal Emergency Management Agency (FEMA).<sup>16</sup> Some of the programs focusing on first responder preparedness, such as the Nunn-Lugar-Domenici program within the Office for Domestic Preparedness (DOJ), have been previously transferred from one department to another. The multiplicity of agencies offering assistance, and the subsequent shifting of agency responsibilities, have reportedly led to some frustration and confusion among state and local officials attempting to secure federal funds. In

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<sup>14</sup>U.S. President (Bush), *Department of Homeland Security*, (Washington: June 2002), p. 11. Available at: [<http://www.whitehouse.gov/deptofhomeland/book.pdf>], visited June 28, 2002.

<sup>15</sup>*Ibid.*, p. 16.

<sup>16</sup>For descriptions of current programs, see CRS Report RL31227, *Terrorism Preparedness: Selected Federal Assistance Programs*, coordinated by Ben Canada.

addition, state and local officials argue that the application process is burdensome and inconsistent among federal agencies.<sup>17</sup>

**Analysis.** H.R. 5005 and S. 2452 address these administrative concerns by making DHS responsible for coordinating and assisting the homeland security efforts of states and localities. H.R. 5005 would make the EPR division responsible for most assistance programs and coordination activities, although it would transfer the Office for Domestic Preparedness (DOJ) and the National Domestic Preparedness Office (FBI) to the Border and Transportation Security division.<sup>18</sup> Other coordination duties, such as information sharing, would be assigned to the Information Analysis and Infrastructure Protection division, Office of Science and Technology, and a National Council for First Responders.<sup>19</sup> Similarly, S. 2452 (as agreed to) would create the EPR division, but assign other state and local preparedness functions to a number of other directorates, including the Directorate for Intelligence and Office of Science and Technology.<sup>20</sup>

Some observers maintain that dividing coordination functions among multiple divisions and offices (even within one department) may not achieve the Administration's stated goal of creating a single point of contact for state and local officials. They see at least two possible problems. First, coordination might not be improved. For example, H.R. 5005 assigns most coordination duties to the EPR division, but also assigns functions of the Office for Domestic Preparedness (DOJ), which focuses on first responder preparedness, to the Border and Transportation Security division.<sup>21</sup> Differences in regulations issued by the divisions could prevent the development of a consistent, department-wide approach to providing assistance. Some have noted that in past reorganizations, such as the Departments of Defense, Transportation, and Energy, agencies with similar functions have been placed under one department, but have not necessarily coordinated activities.<sup>22</sup>

Second, they point out that state and local officials would still have to contact different agencies within DHS depending on their area of need. This seemingly conflicts with the Administration's goal to develop a "one stop" department for state and local assistance.

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<sup>17</sup>Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction (Gilmore Commission), *Third Annual Report to the President and the Congress* (Washington: December 15, 2001), p. 10; National League of Cities, *Domestic Terrorism: Resources for Local Governments* (Washington: 2000), p. 20; U.S. General Accounting Office, *Combating Terrorism: Selected Challenges and Related Recommendations*, GAO Report GAO-01-822 (Washington: Sept. 20, 2001), pp. 96-98.

<sup>18</sup>H.R. 5005, sec. 402(5), (6), and (7).

<sup>19</sup>H.R. 5005 (as passed), sec. 104(c)(1), sec. 301(6)(C), and sec. 201(3), (6), and (8).

<sup>20</sup>S. 2452 (as agreed to), sec. 134, sec. 132(b), and sec. 135 (c)(2)(E).

<sup>21</sup>H.R. 5005, sec. 402(5), (6), and (7).

<sup>22</sup>Sydney J. Freedberg, Corine Hegland, and Margaret Kriz, "Three Departments Offer Important Lessons on Reorganization," *National Journal*, June 15, 2002, pp. 1770-1772.

These potential problems arguably have been addressed by Congress through the proposed establishment of an Office for State and Local Government Coordination, which is proposed in the House and Senate bills. H.R. 5005 and S. 2452 would instruct the office to:

(1) coordinate the activities of the Department relating to State and local government; (2) assess, and advocate for, the resources needed by State and local government to implement the national strategy for combating terrorism; (3) provide State and local government with regular information, research, and technical support to assist local efforts at securing the homeland; and (4) develop a process for receiving meaningful input from State and local government to assist the development of the national strategy for combating terrorism and other homeland security activities.<sup>23</sup>

S. 2452, as agreed to by the Senate Governmental Affairs Committee, would also require the Office of State and Local Government Coordination to appoint a DHS liaison to each state to coordinate federal assistance, assess state and local needs, and provide training and information. The Senate bill would also require the Chief Homeland Security Liaison to report annually on state and local needs, federal program effectiveness, and recommendations for changes in federal statutes. Furthermore, it would create a Federal Interagency Committee on First Responders and instruct it to ensure coordination among federal agencies involved with state and local preparedness.<sup>24</sup>

### **Policy Alternatives.**

*Authorize an Office for State and Local Government Coordination.* This approach, which is being taken in H.R. 5005 and S. 2452, would essentially seek to “coordinate the coordinators.” A questions remains, however, about the extent of the office’s duties. As described above, both bills list four basic functions for the office, but the Senate bill instructs it to conduct several other activities that could further assist states and localities to procure federal assistance and improve their level of preparedness. S. 2452 also calls for annual reports on state and local needs, which could assist Congress in appropriating funds for state and local preparedness programs.

The office’s mission arguably could be enhanced by incorporating into it the National Clearinghouse on Emergency Preparedness proposed in S. 2452. The Senate bill proposes that the clearinghouse maintain a “one-stop shop” for information on federal preparedness grants. It would also make available to state and local officials information on best practices in emergency management.<sup>25</sup> This approach could address the concerns of state and local officials about the lack of a single point of contact.

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<sup>23</sup>H.Amdt. 587 to H.R. 5005 (Rush), agreed to July 25, 2002; S. 2452 (as agreed to), sec. 137(b).

<sup>24</sup>S. 2452 (as agreed to), sec. 137(c), (d), and (e).

<sup>25</sup>S. 2452 (as agreed to), sec. 152.



Another issue concerns the office's degree of authority. If it has too much authority it might interfere with the ability of agencies within DHS to conduct their mission. On the other hand, if it has too little authority, the office may be ineffective and an uncoordinated approach to providing assistance could result.

Authorizing an Office for State and Local Government Coordination could overlap with the duties of the Office of National Preparedness (ONP) within FEMA. In May 2001, President Bush instructed FEMA to establish the ONP to "coordinate all Federal programs dealing with weapons of mass destruction consequence management within the [federal government] ..." and to "... work closely with state and local governments to ensure their planning, training, and equipment needs are addressed."<sup>26</sup> This potential overlap could be addressed by consolidating the ONP and the Office for State and Local Government Coordination, or by clearly distinguishing in legislation the duties of each office.

*Place Coordination Activities in the EPR Division.* Yet another alternative would be to place all coordination and assistance activities within the department's EPR division, including grant programs, standard setting, and intelligence sharing, among others. This, arguably, would be the most effective method of creating a "one-stop shop" for state and local officials. This approach, however, could present administrative difficulties. For example, a state official seeking technical assistance might contact the EPR division, but the federal officials with the desired expertise could reside in another DHS division or another federal agency. Depending on departmental regulations and practices, the state official might never gain access to the DHS's most knowledgeable personnel, or access could be delayed. Assigning all coordination and assistance duties to a single division could make it difficult for the DHS to make all its expertise and other resources available to state and local officials. Placing all coordination and assistance activities within the EPR division could also detract resources from the division's natural disaster preparedness mission (see "Preparedness for Natural Disasters," below).

## **Setting Standards and Evaluating State and Local Preparedness**

Preparedness standards specify activities and levels of competence that state and local responders are encouraged to achieve and maintain. Standards may be *technical*, such as for communications equipment, or *operational*, such as for response planning and training. The National Fire Protection Association (NFPA), National Emergency Management Association (NEMA), and FEMA have worked together to develop voluntary standards, and to encourage states and localities to assess their competency based on those standards (see **Figure 1**, below). Standards have been developed for most emergency management functions, from the broadest functions, such as response planning, to more specific ones like response to hazardous materials incidents.

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<sup>26</sup>U.S. Federal Emergency Management Agency, "Structure of the Office of National Preparedness" (Washington: Feb. 15, 2002), pp. 2-3. The Administration proposal does not address the role of ONP in the new department.

The Administration's report on the DHS states that the Emergency Preparedness and Response division (EPR) would "develop and manage a national training and evaluation system to design curriculums, set standards, evaluate, and reward performance in local, state, and federal training efforts."<sup>27</sup> The Senate bill, as introduced, also addressed standard-setting by authorizing the Directorate of Emergency Preparedness and Response to establish training and equipment standards for state and local first responders, as well as federal authorities.<sup>28</sup> This function, however, was not included in the version of S. 2452 agreed to on July 25, 2002.

**Analysis.** In considering the role of the DHS in standard setting and evaluating state and local preparedness, Congress may ask whether the department would build upon existing standards and evaluation mechanisms. The efforts of NFPA, NEMA, and FEMA are summarized in **Figure 1**, below. Unless existing standards and assessments were modified or eliminated, new and separate standards and assessments could impose a duplicative administrative burden on state and local officials. On the other hand, national standards could lead to significant improvements in state and local response capability.

### Figure 1. Existing Standards and Assessment Processes

The *National Fire Protection Association's code 1600* establishes standards for emergency planning and capabilities. The code organizes the standards into 13 emergency management functions. It is designed to apply to any public or private entity that is required to develop emergency response plans by legislation, regulation, or agency policy. While the standards are voluntary, they are commonly accepted standards and would likely be the standards applied in any judicial action involving a government's emergency response.

FEMA's *Capability Assessment for Readiness (CAR)* is a self-assessment process for state-level emergency management agencies to use to evaluate their own readiness. The CAR process is presently being pilot-tested for use at the local level. The process, which is organized around the same 13 emergency management functions used in NFPA 1600, is intended to help states develop strategic goals to improve their readiness. While governments can conduct the assessment on their own, they are encouraged to work with the FEMA regional office.

The *Emergency Management Accreditation Program (EMAP)*, which is administered by the National Emergency Management Association, is a structured, independent evaluation process that requires agencies seeking accreditation to undergo FEMA's Capability Assessment for Readiness (CAR) process. EMAP, however, requires documentation and outside review to ensure the agency has effectively undergone the self-assessment. Accreditation is meant to provide a means of identifying agencies that meet national standards and offers a strategy for continuous improvement.

<sup>27</sup>U.S. President (Bush), *Department of Homeland Security*, p. 11. H.R. 5005, however, does not contain an explicit provision that instructs the EPR division to conduct such activities.

<sup>28</sup>S. 2452 (as introduced), sec. 103(a)(3)(F).

Another issue is the degree of authority the DHS should have to encourage standards. Some observers favor voluntary standards, while others support mandatory standards. FEMA officials, as well as Director of Homeland Security Tom Ridge, have expressed support for nationwide standards for all first responders. FEMA officials, however, have previously stated that any grant funds they award should not be contingent on satisfying those standards. Rather, FEMA hopes to encourage states and localities to adopt common standards for equipment, training, mutual aid, and other aspects of emergency management. Bruce Baughman, Director of FEMA's Office of National Preparedness, hopes nationwide standards will be prepared by October 2002.<sup>29</sup> On the other hand, some observers believe preparedness standards need to be required and institutionalized. One analyst stated in her congressional testimony:

The prerequisite for institutionalization is standards, and all of the response disciplines—fire, police, EMS, hospital care providers—[have] expressed an abundance of frustration over the absence of standards and protocols to guide them. Standards command the attention of rescue and healthcare personnel because they are the backbone of accountability.<sup>30</sup>

### **Policy Alternatives.**

*Give DHS Authority.* Were Congress to determine that state and local adherence to standards is imperative to homeland security, it could give the DHS a degree of authority to develop, encourage, or require standards.<sup>31</sup> Early versions of H.R. 5005 and S. 2452 included provisions on standard setting. H.R. 5005, as introduced, instructed the Chemical, Biological, Nuclear, and Radiological Countermeasures (CBRN) division to establish guidelines for state and local response to terrorist attacks involving weapons of mass destruction.<sup>32</sup> The House-passed version of H.R. 5005 takes a narrower approach, addressing only standards for response equipment. The bill creates a Homeland Security Institute and instructs it to identify instances when "... common standards and protocols could improve the interoperability and effective utilization of tools developed for field operators and first responders."<sup>33</sup> S. 2452, as reported in June 24, 2002, would have authorized the

<sup>29</sup>Quoted in Bridgette Blair, "FEMA Seeks National Rules for Emergency Response," *Federal Times*, March 11, 2001, p. 10.

<sup>30</sup>Statement of Amy E. Smithson, Senior Associate, Henry L. Stimson Center, in U.S. Congress, House Committee on Government Reform, Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations, *A Silent War: Are Federal, State, and Local Governments Prepared for Biological and Chemical Attacks?*, hearings, 107<sup>th</sup> Cong., 1<sup>st</sup> sess., Oct. 5, 2001.

<sup>31</sup>Such a policy approach is taken in S. 2664, the First Responder Terrorism Preparedness Act of 2002. The bill, which was reported by the Senate Environment and Public Works Committee in July 2002, would authorize the Office of National Preparedness in FEMA to develop standards for plans, training, and equipment. For more information see CRS Report RL31475, *First Responder Initiative: Issues and Options*, by Ben Canada.

<sup>32</sup>H.R. 5005 (as introduced), sec. 301(4).

<sup>33</sup>H.R. 5005 (as passed), sec. 310(c)(4).

EPR division to develop training and equipment standards for first responders.<sup>34</sup> The Senate Governmental Affairs Committee's July 26 version of S. 2452, however, does not contain a similar provision.

In its congressional testimony, the U.S. General Accounting Office (GAO) has laid out a range of approaches Congress could take. Congress could legislate federal minimum standards that preempt state-level standards perceived to be below the desired minimum level. Alternatively, it could condition the receipt of federal grants on satisfying federal minimum standards. Yet another approach would be to authorize the DHS to undertake cooperative programs to encourage voluntary adoption of standards.<sup>35</sup>

Preempting state regulations or conditioning federal grants could impose significant financial burdens on states and localities. Some equipment, such as interoperable communications infrastructure and WMD response equipment, could be prohibitively expensive even with federal assistance. If Congress decided to condition federal grants on compliance with national standards, some recipients might be deterred from accepting the grants. This might be more likely to occur in jurisdictions perceiving themselves to be at low risk of a terrorist attack. On the other hand, considering the nationwide salience of the issue of terrorism preparedness and the fact that many states are experiencing significant budget difficulties, states and localities might readily accept federal assistance and any accompanying conditions. Congress might also find that cooperative programs carried out by the DHS would be insufficient for achieving the desired level of preparedness.

*Regular State-Level Assessments.* Another option would be to instruct the DHS to regularly evaluate the overall preparedness of states to respond to WMD events. Such a measure, which was added to H.R. 5005, would instruct the DHS to report to Congress every two years on the preparedness of each state.<sup>36</sup> In 2000, FEMA conducted a nationwide assessment through its Capability Assessment for Readiness process (CAR), which some state and local emergency managers say is a useful evaluation mechanism.<sup>37</sup> The CAR, however, contains only a limited number of broad performance indicators directly addressing preparedness for WMD events.<sup>38</sup>

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<sup>34</sup>S. 2452 (as reported June 2002), sec. 103(a)(3)(F).

<sup>35</sup>U.S. General Accounting Office, *Combating Terrorism: Enhancing Partnerships Through a National Preparedness Strategy*, GAO Testimony GAO-02-549T (Washington: March 28, 2002), pp. 14-15. Also see "Conditioning Grants" in CRS Report RL30778, *Federal Grants to State and Local Governments: Concepts for Legislative Design and Oversight*, by Ben Canada.

<sup>36</sup>H.Amdt. 588 (Shays/Watson) to H.R. 5005, agreed to July 25, 2002.

<sup>37</sup>See statement of Woodbury Fogg, Director, New Hampshire Office of Emergency Management, on behalf of the National Emergency Management Association, House Committee on Government Reform, Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations, hearings, Oct. 5, 2001.

<sup>38</sup>FEMA's 2000 CAR report lists the following four broad performance indicators addressing WMD preparedness: (1) acquire appropriate equipment for WMD response; (2) (continued...)

Congress could further instruct the EPR division to build upon the existing CAR, enhancing its ability to comprehensively assess state preparedness for WMD events. While this option could lead to improved assessments, it could also impose an administrative burden on state and local officials undertaking the assessments, unless Congress appropriated funds to assist states in completing the assessments.

*Interdivisional Coordination.* Whatever level of standard-setting authority Congress decides to give to the DHS, the EPR division and other divisions with relevant functions could be instructed to coordinate their activities with relevant nongovernmental organizations. As discussed above, several organizations representing state and local first responders have developed voluntary standards, which could serve as a foundation for developing nationwide standards for WMD preparedness and response.

## Focus of First Responder Training Programs

Both H.R. 5005 and S. 2452 would direct the DHS Secretary to provide training concerning terrorist attacks and natural disasters to state and local first responders, including firefighters and emergency medical, law enforcement, public health, and other related personnel.<sup>39</sup> Both bills would integrate into the DHS several agencies that currently offer training to first responders, including the Federal Emergency Management Agency (FEMA) and the Justice Department's Office for Domestic Preparedness (ODP), among others.<sup>40</sup>

**Analysis.** H.R. 5005 and S. 2452 direct the Emergency Preparedness and Response division (EPR) to conduct first responder training, but do not directly address the focus and content of DHS training programs. There are disagreements among policymakers, federal officials, and state and local officials as to whether terrorism response training should be taught in a law enforcement context.

Under the Interagency Domestic Terrorism Concept of Operations Plan (CONPLAN), terrorism response is presently divided into *consequence management*, which involves response to and recovery from attacks, and *crisis management*, which involves criminal investigations and the pursuit of terrorists.<sup>41</sup> The existing array of federal training programs for first responders can be grouped into these two categories. Training courses offered by FEMA have traditionally focused on only consequence management activities, no matter the type of disaster. Training offered

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<sup>38</sup>(...continued)

address WMD attacks in emergency operations plans; (3) develop procedures for responding to WMD attacks; and (4) regularly exercise the WMD response plans. See U.S. Federal Emergency Management Agency, *State Capability Assessment for Readiness*, Report to Senate Committee on Appropriations (Washington: Sept. 2001), pp. 129-130.

<sup>39</sup>H.R. 5005 (as passed) sec. 102(c) and sec. 501(1); S. 2452 (as agreed to), sec. 134; Also see U.S. President (Bush), *Department of Homeland Security*, p. 11.

<sup>40</sup>H.R. 5005 (as passed), sec. 501; S. 2452 (as agreed to), sec. 134.

<sup>41</sup>The CONPLAN is available at the FBI web site: [<http://www.fbi.gov/publications/conplan/conplan.pdf>], visited July 1, 2002.

by the ODP, however, treats terrorist attacks as criminal acts, and thus takes place in a crisis management and law enforcement context.

Some policymakers and observers argue that a terrorist attack is not only a disaster scene but also a crime scene, and thus training should be adapted to suit law enforcement needs. This could involve teaching all first responders certain law enforcement techniques that would not be needed in a natural disaster context, such as crime scene preservation, evidence recognition, and perimeter security. One analyst wrote of the importance of all first responders receiving such training:

Evidence conservation is an important issue and may involve everything from the identification of debris lying long distances from the incident to acquisition of a victim's clothing. Emergency responders must be taught to preserve evidence, taking care not to destroy or discard anything. Even clothing cut from contaminated and injured victims must be bagged, marked, and maintained.<sup>42</sup>

Some observers also argue that law enforcement training is necessary to teach first responders to recognize signs of "secondary devices"—explosives used for the explicit purpose of harming first responders and civilian onlookers. Some observers believe that there is a rising trend in the use of secondary devices.<sup>43</sup>

Such training is currently available to all first responders through the Office for Domestic Preparedness (ODP) of the Department of Justice.<sup>44</sup> In recent months, the Administration has proposed a series of transfers of the ODP. In February 2002, the Administration's FY2003 budget proposed that ODP be transferred to FEMA in an effort to consolidate first responder assistance programs in one agency.<sup>45</sup> Subsequently, the Administration proposed incorporating FEMA into the new DHS. H.R. 5005 and S. 2452 follow these proposals and integrate both FEMA and ODP into the new DHS.

The Administration, however, has argued that first responders should not be trained in law enforcement techniques, arguing that the distinction between crisis management and consequence management, which is the basis for such training, is an "artificial distinction."<sup>46</sup> Administration officials have said that they are not in favor of including law enforcement techniques in DHS training programs. FEMA Director Joe Allbaugh stated that, "[w]hile FEMA will coordinate grants and assistance to first responders, it will not assume any law enforcement functions, nor will FEMA provide law enforcement training—training on investigation techniques,

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<sup>42</sup>Armando Bevelacqua and Richard Stilp, *Terrorism Handbook for Operational Responders* (Albany, NY: Delmar, 2002), p. 5.

<sup>43</sup>*Ibid.*, pp. 13-14.

<sup>44</sup>The ODP web site is: [<http://www.ojp.usdoj.gov/odp/>].

<sup>45</sup>See statement of Joe M. Allbaugh, Director, U.S. Federal Emergency Management Agency, U.S. Congress, Senate Committee on Environment and Public Works, *First Responder Initiative*, hearings, March 12, 2002.

<sup>46</sup>U.S. President (Bush), *Department of Homeland Security*, p. 12.

evidence collection techniques, rights of suspects and detainees, or the like.”<sup>47</sup> Homeland Security Director Tom Ridge also stated that during a response to a terrorist attack, first responders would likely concentrate on saving lives and not on criminal investigations.<sup>48</sup> This training approach is supported by some analysts, including one who stated, “... the distinction between incident management and consequence management [is] a false dichotomy. Terrorism is a crime that has to be investigated, and at the same time the victims have to be treated.”<sup>49</sup>

### **Policy Alternatives.**

*Full Integration.* Offering training in a law enforcement context *and* integrating training into one department could both be viewed as desirable goals. Thus, the functions of FEMA and ODP could be incorporated within the new Emergency Preparedness and Response division (EPR) of the DHS, as proposed in S. 2452. The EPR division could be instructed to include appropriate law enforcement techniques in its terrorism-oriented training. Some observers believe that the inclusion of law enforcement techniques in training programs does *not* conflict with the consequence management functions of first responders. One observer stated, “... It is possible to carry out the emergency responders’ mission without creating more problems for the crime scene. This is best accomplished through training and awareness of potential crime scenes. and acting to minimize damage to the area and its contents.”<sup>50</sup>

This approach, however, could delay the availability of training for first responders because the new EPR division might require some time to integrate the ODP and FEMA training curricula. This approach might also meet resistance from some state and local law enforcement officials who have supported the Justice Department’s retention of the ODP.<sup>51</sup>

*Integrate ODP, not FEMA.* Another approach would be to integrate the ODP into the DHS, as well as the homeland security functions of FEMA (including the Office of National Preparedness), but leave FEMA as an independent agency. In effect, this would divide federal emergency management training into two categories: terrorism training offered by the DHS and natural disaster training offered by FEMA. DHS could be instructed to include law enforcement techniques in its training, while

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<sup>47</sup>Joe M. Allbaugh, Director, U.S. Federal Emergency Management Agency, letter to Hon. F. James Sensenbrenner, Jr., March 13, 2002, p. 2.

<sup>48</sup>Tom Ridge, Director, White House Office of Homeland Security, briefing before the National Sheriff’s Association, *Federal News Service*, March 1, 2002.

<sup>49</sup>Anser Institute, “Consequence Management in the Wake of the Attack on America,” *Journal of Homeland Security*, Sept. 13, 2001. Available at: [<http://www.homelanddefense.org/journal/Interviews/displayInterview.asp?interview=6>], visited July 18, 2002.

<sup>50</sup>Paul. M. Maniscalco and Hank T. Christen, *Understanding Terrorism and Managing the Consequences* (Upper Saddle River, NJ: Prentice Hall, 2002), pp. 254-255.

<sup>51</sup>See International Brotherhood of Police Officers, letter to Hon. Lamar Smith, March 8, 2002.

FEMA could be given discretion to omit such training from its natural disaster training. This, arguably, would be consistent with the Administration's stated goal of consolidating all homeland security training programs into one department. It could also address the concerns of some observers and policy makers that FEMA should not be included in the DHS because the majority of its activities deal with natural disasters.<sup>52</sup> On the other hand, this approach may not address the concerns of state and local officials about the fragmentation in federal training opportunities.

*Integrate FEMA, not ODP.* A related alternative would be to allow the Justice Department to retain ODP and continue to offer its training courses. This alternative could be considered whether or not Congress includes FEMA in a new DHS. This approach would allow state and local first responders to acquire training in a law enforcement context, in addition to the training offerings by FEMA and a new DHS. Some organizations representing first responders, as well as some policy makers, have supported the Justice Department's retention of ODP, arguing the FEMA does not have the necessary experience to train first responders to deal with the law enforcement aspects of terrorist attacks.<sup>53</sup> On the other hand, this approach might not accomplish the Administration's goal of creating a single department to administer training to first responders, and might prolong the perceived overlaps in federal training opportunities, which have prompted frequent criticism of federal policy on state and local preparedness.<sup>54</sup>

*Establish Commission.* Yet another alternative would be instruct a commission to evaluate the need for including law enforcement techniques in terrorism-oriented training for first responders. The House and Senate bills both propose using advisory committees to address first responder needs.<sup>55</sup> Considering that the implementation of a DHS reorganization would require several months, if not years, there may be sufficient time for a commission to thoroughly study such issues. A commission could include representatives from all first responder groups at all levels of government and make recommendations for the DHS training curricula.

## Preparedness for Natural Disasters

Although FEMA is perhaps best known for assistance after disasters, the agency is also responsible for helping states and localities prepare for natural disasters,

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<sup>52</sup>See House Committee on Transportation and Infrastructure, "Explanation of Manager's Amendment to H.R. 5005," July 11, 2002; House Judiciary Committee, "Views and Recommendations on H.R. 5005," July 12, 2002; James Lee Witt and Associates, *Department of Homeland Security and FEMA* (Washington: 2002), unpublished.

<sup>53</sup>See letter from Hon. James F. Sensenbrenner, Jr. to Hon. C.W. Bill Young, May 20, 2002; International Association of Fire Fighters, letter to Hon. Robert C. Byrd and Hon. Ted Stevens, March 28, 2002; International Brotherhood of Police Officers, letter to Hon. Lamar Smith, March 8, 2002.

<sup>54</sup>Gilmore Commission, *Third Annual Report*, p. 10; National League of Cities, *Domestic Terrorism: Resources for Local Governments*, p. 20; U.S. General Accounting Office, *Selected Challenges and Recommendations*, pp. 96-98.

<sup>55</sup>H.R. 5005 (as passed), sec. 104; S. 2452 (as agreed to), sec. 137(d) and (e).



including floods, hurricanes, and wildfires. Two entities within the agency, the U.S. Fire Administration and the Emergency Management Institute, offer a wide range of courses to first responders and other state and local officials. FEMA also administers several grant programs that assist states and localities with emergency planning and hazard mitigation.<sup>56</sup> Both H.R. 5005 and S. 2452 propose transferring FEMA into the new DHS. In both proposals, FEMA would constitute one division of the new department, focusing on emergency preparedness and response.

**Analysis.** Some analysts and policy makers fear that incorporating FEMA into the new DHS would detract from the Agency's mission to assist states and localities to prepare for natural disasters as well as its response and recovery missions. For example, James Lee Witt, former Director of FEMA, has said:

In the atmosphere of the past year (including the period prior to September 11<sup>th</sup>) the devotion to terrorism planning has already affected the FEMA mission. All the momentum for pre-disaster mitigation work with communities has been lost. Folding FEMA into a homeland or national security agency will seriously compromise the nation's previously effective response to natural hazards.<sup>57</sup>

The Brookings Institution analysis of the DHS proposal echoes this concern, suggesting that if FEMA were incorporated into the DHS, much of the progress the agency has made over the past decade could be reversed.<sup>58</sup>

On the other hand, the Administration has emphasized that integration into the DHS would not interfere with FEMA's natural disaster preparedness activities. It suggests that FEMA's progress in this area could lead to improvements in terrorism preparedness:

[The DHS] would continue FEMA's efforts to reduce the loss of life and property and to protect our nation's institutions from all types of hazards through a comprehensive, risk-based, all-hazards emergency management program of preparedness, mitigation, response, and recovery. And it will continue to change the emergency management culture from one that reacts to terrorism and other disasters, to one that proactively helps communities and citizens avoid becoming victims....

The Department would continue FEMA's practice of focusing on risk mitigation in advance of emergencies by promoting the concept of disaster-resistant communities. It would continue current federal support for local

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<sup>56</sup>For more information on FEMA's natural disaster activities, see CRS Report RL31285, *FEMA's Mission: Policy Directives for The Federal Emergency Management Agency*, by Keith Bea; and CRS Report RS20071, *The United States Fire Administration: An Overview*, by Len Kruger; also see FEMA training web site: [<http://training.fema.gov/>].

<sup>57</sup>James Lee Witt and Associates, *Department of Homeland Security and FEMA* (Washington: 2002), unpublished.

<sup>58</sup>Brookings Institution, *Assessing the Department of Homeland Security* (Washington: July, 2002), p. vi. Available at: [<http://www.brookings.edu/dybdocroot/fp/projects/homeland/assess.htm>], visited July 22, 2002.

government efforts that promote structures and communities that have a reduced chance of being impacted by disasters.<sup>59</sup>

### **Policy Alternatives.**

*Integrate FEMA.* One approach would be to integrate FEMA into the DHS, but instruct the DHS Secretary to maintain FEMA’s current activities in natural disaster preparedness and pre-disaster mitigation. This approach may allow the DHS to improve terrorism preparedness by building upon FEMA’s successes, while preserving federal resources for natural disaster preparedness. Both H.R. 5005 and S. 2452 list responding to and preparing for natural disasters as duties of the DHS. During House deliberations, an Amendment was added to H.R. 5005 preserving FEMA’s current focus on four phases of emergency management—mitigation, preparedness, response, and recovery. The amendment also emphasized maintaining programs oriented toward all hazards.<sup>60</sup>

Alternatively, the DHS Secretary could be given discretion to determine the department’s balance between terrorism preparedness and natural disaster preparedness activities. Some observers argue that the current threat from terrorists warrants the end of FEMA’s all-hazards approach to emergency management in favor of emphasis on terrorism preparedness. This approach, however, could meet with criticism from observers who argue that, despite the threat of terrorism, an all-hazards approach is necessary to help states and localities prepare for natural disasters.<sup>61</sup>

*Leave FEMA as an Independent Agency.* Another approach would be to leave FEMA an independent agency, but transfer its national security-related functions to the DHS. This approach may allow the DHS to focus on terrorism preparedness and allow FEMA to continue its focus on natural disaster preparedness and disaster relief.

Although this approach was not taken by the House or the Senate Governmental Affairs Committee, some House committees recommended such an approach in their markups of H.R. 5005. The House Judiciary Committee, for example, recommended maintaining FEMA’s independence, observing that its “... main mission as a consequence management agency is to respond to natural disasters.” The committee, however, did recommend transferring FEMA’s Office of National Preparedness, which assists states and localities with preparing for weapons of mass destruction, to the DHS.<sup>62</sup> The House Transportation and Infrastructure Committee, which has

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<sup>59</sup>see U.S. President (Bush), *Department of Homeland Security*, p. 11.

<sup>60</sup>See House Amdt. 575 (Young) to H.R. 5005, agreed to July 25, 2002; also see S. 2452 (as agreed to), sec. 134(b)(1) and (b)(4).

<sup>61</sup>For example, see Witt and Associates, *Department of Homeland Security and FEMA*; and Brookings Institution, *Assessing the Department of Homeland Security*, p. vi.

<sup>62</sup>U.S. Congress, House Committee on the Judiciary, “Summary of H.R. 5005 Markup,” 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., July 12, 2002. Available at: [<http://www.house.gov/judiciary/>]  
(continued...)

responsibility for overseeing FEMA's operations, also recommended leaving the agency independent, but instructed it to work with DHS to distinguish each agency's duties.<sup>63</sup>

This approach, however, could leave the DHS without the necessary resources to adequately prepare states and localities for terrorist attacks. Integrating FEMA could allow the DHS to use the Agency's training and grant administration resources and its existing relationships with state and local institutions. Not integrating FEMA into the DHS might also continue the perceived lack of coordination of federal preparedness assistance programs.

## Conclusion

Congress is examining a range of issues as it considers H.R. 5005 and S. 2452. This report addresses several issues relating to state and local preparedness and the duties of proposed EPR division. For more information on preparedness issues and the Department of Homeland Security proposals, see CRS Report RL31510, *Proposed Transfer of FEMA to the Department of Homeland Security*, by Keith Bea. For general information on state and local preparedness issues, see CRS Report RL31266, *State and Local Preparedness for Terrorism: Policy Issues and Options*, by Ben Canada.

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<sup>62</sup>(...continued)  
homeland071502.PDF], visited July 22, 2002.

<sup>63</sup>U.S. Congress, House Committee on Transportation and Infrastructure, "Explanation of Manager's Amendment to H.R. 5005," 107<sup>th</sup> Cong., 2<sup>nd</sup> sess., July 11, 2002. Available at: [<http://www.house.gov/transportation/homelandsecurity/amendmentexplanation.html>], visited July 19, 2002.

The Committee's oversight of the Department of Homeland Security (DHS) includes monitoring the security of our borders and ports of entry. The Committee regularly works with government agencies within DHS, including the United States Citizenship and Immigration Service, United States Customs and Border Protection, and the United States Immigration and Custom Enforcement to mitigate the threats presented by the potential for terrorists to enter our country, the effects of undocumented immigration and the potential for illicit substances to enter our nation at our borders. This includes oversight of our nation's preparedness to prevent and respond to a terrorist attack with a nuclear weapon or a weapon of mass destruction. Congressional Research Service. Department of Homeland Security Preparedness Grants: A Summary and Issues. Introduction. for state and local law enforcement personnel costs such as overtime, but for the past couple of fiscal years, states and localities can fund law enforcement personnel overtime using this money. These programs specifically provide state and local governments with preparedness program funding in the form of non-disaster grants to enhance the capacity of state and local emergency responders to prevent, respond to, and recover from a weapons of mass destruction terrorism incident involving chemical, biological, radiological, nuclear, explosive devices, and cyber-attacks.

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