

Report for Congress

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Department of Homeland Security: State and Local Preparedness Issues

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Department of Homeland Security: State and Local Preparedness Issues

Summary

The Homeland Security Act of 2002 (P.L. 107-296) made the new Department of Homeland Security (DHS) responsible for providing assistance to state and local governments to ensure adequate preparedness for all disasters, including terrorist attacks. Several federal entities with functions relating to state and local preparedness, ranging from entire independent agencies to units of agencies and departments, will be transferred to the new department. Those transferred to the Emergency Preparedness and Response directorate (EPR) include:

- Federal Emergency Management Agency (FEMA), in its entirety;
- National Domestic Preparedness Office and Domestic Emergency Support Teams, (FBI, within the Department of Justice);
- Office of Emergency Preparedness (HHS), including the National Disaster Medical System and Metropolitan Medical Response System; and,
- National Strategic Stockpile (HHS).

The Justice Department's Office for Domestic Preparedness (ODP) will be transferred to the Border and Transportation Security directorate. ODP provides training, equipment grants, and technical assistance to states and localities. Its assistance activities focus exclusively on preparedness for terrorist attacks—particularly those involving weapons of mass destruction.

As the 108th Congress oversees the implementation of the Homeland Security Act and the creation of the new department, it may address several issues pertaining to state and local preparedness, such as:

Coordination and Integration of Preparedness Programs. The Homeland Security Act relocated most federal agencies with preparedness functions into the new department, and distributed the functions primarily within two directorates. Some observers are concerned that this separation of functions will inhibit the department's ability to develop a comprehensive approach to providing assistance. The department's Office of State and Local Government Coordination, however, may have the necessary authority to develop a department-wide approach.

All-Hazards Approach. Some observers are concerned that integrating FEMA into the new department could impact state and local preparedness for natural disasters. The Act instructs FEMA to maintain its all-hazards focus, but some observers contend that, with the threat of terrorism, this approach may no longer apply.

Focus of Terrorism Preparedness Programs. The Act makes ODP responsible for all terrorism-oriented assistance programs. Congress may be asked to reconsider the way in which the department will integrate assistance programs from different agencies. Administration officials have stated that first responder training should not be done in a law enforcement context, which concerns some policymakers and emergency managers.

Contents

Overview of Department Functions	1
Legislation in the 107 th Congress	3
Legislation in the 108 th Congress	4
Issues Affecting State and Local Preparedness	4
Administrative Coordination of Preparedness Programs	5
Analysis	5
Policy Approaches	7
Debate Over the All-Hazards Approach	8
Analysis	8
Policy Approaches	9
Debate Over Content of Terrorism Preparedness Programs	10
Analysis	10
Policy Approaches	12
Conclusion	13
Related CRS Products	13
Appendix	15

List of Tables

Table 1. Proposed Organization of Domestic Preparedness Programs in Selected DHS Bills	15
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Department of Homeland Security: State and Local Preparedness Issues

Overview of Department Functions

The Homeland Security Act of 2002 (P.L. 107-296) created a new Department of Homeland Security (DHS) with a number of responsibilities relating to state and local preparedness for potential terrorist attacks. In general, the DHS Secretary is responsible for administering grant programs for state and local first responders, including firefighters, emergency medical personnel, law enforcement, and related personnel.¹ This report discusses selected state and local preparedness issues that pertain to the responsibilities of two of the new department's directorates: Emergency Preparedness and Response (EPR) and Border and Transportation Security (BTS).²

The Act places many federal agencies and offices with functions related to state and local preparedness in the new department's Emergency Preparedness and Response directorate (EPR). The directorate will integrate these agencies and their programs, including:

- Federal Emergency Management Agency (FEMA)—Administers a wide range of “all-hazards” assistance programs for states and localities, including planning, training, equipment, and field exercise programs;³
- National Domestic Preparedness Office (NDPO)—Intended to act as an information clearinghouse to assist state and local responders with planning, training, equipment, and exercise needs necessary to respond to WMD incidents. This office is distinct from the Office for Domestic Preparedness (ODP);⁴
- Domestic Emergency Support Team (DEST)—Assembles an interagency team of experts, led by the FBI, that can provide an on-scene commander with assessment and advice concerning a situation involving a WMD;

¹P.L. 107-296, sec. 102(c).

²Issues relating to the Border and Transportation Security directorate are discussed in CRS Report RL31549, *Department of Homeland Security: Proposals to Consolidate Border and Transportation Security Agencies*, coordinated by Bill Krouse.

³The Federal Emergency Management Agency web site is: [<http://www.fema.gov>].

⁴At the time of this writing, the NDPO has no staff assigned to it and its web site [<http://www.ndpo.gov>] is no longer available.

- Office of Emergency Preparedness and the National Disaster Medical System (NDMS)—Assists state and local governments with planning for public health emergencies, including bioterrorism, and coordinates federal medical services during disaster response.⁵
- Metropolitan Medical Response System (MMRS)—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.⁶
- National Strategic Stockpile—The stockpile (formerly called the National Pharmaceutical Stockpile) has been developed for immediate deployment to any U.S. location in the event of a terrorist attack involving a biological toxin or chemical agent.⁷ and,
- Integrated Hazard Information System (IHIS)—This system, previously administered by the National Oceanic and Atmospheric Administration, compiles data obtained from numerous satellites and sensors, some of which are used to detect ballistic missiles, and others which monitor weather conditions.

The Justice Department's Office for Domestic Preparedness (ODP) will be transferred to the Border and Transportation Security directorate. Currently, ODP offers planning assistance, equipment grants, and training for responding to weapons of mass destruction (WMD) incidents. All assistance is offered in a law enforcement context.⁸ The Homeland Security Act instructs ODP to coordinate preparedness efforts among federal, state, and local governments, and to supervise all federal terrorism preparedness grant programs.⁹

The Act also created an Office of State and Local Government Coordination, which is charged with coordinating departmental activities relating to states and localities. Specifically, the office will assess state and local needs, provide states and localities with information and technical support, and develop a process for receiving input from state and local officials on national homeland security strategies.¹⁰

The Act did not authorize any new assistance programs. And, with the exception of transferring the terrorism-related functions of FEMA's Office of

⁵The Office of Emergency Preparedness web site is: [<http://ndms.dhhs.gov/>].

⁶The Metropolitan Medical Response System web site is: [<http://www.mmrs.hhs.gov/>].

⁷For information on the National Pharmaceutical Stockpile, see: [<http://www.cdc.gov/nceh/nps/default.htm>].

⁸The Office of Domestic Preparedness web site is: [<http://www.ojp.usdoj.gov/odp/>].

⁹P.L. 107-296, sec. 430(c).

¹⁰P.L. 107-296, sec.801.

National Preparedness to ODP, the act did not modify any existing assistance programs.¹¹

Legislation in the 107th Congress. Legislative debate over the new department's role in state and local preparedness focused to a large extent on the organization and responsibilities of the agencies transferred into the department, notably the organization and responsibilities of FEMA and the ODP, which arguably offer the most preparedness assistance to states and localities. In its initial DHS proposal, the Bush Administration would have transferred to the Emergency Preparedness and Response directorate (EPR) nearly all federal agencies and offices with functions relating to state and local preparedness.¹² The Administration specifically requested the transfer and consolidation of FEMA and ODP in the new directorate, as part of its effort to consolidate first responder assistance programs.¹³ (Table 1 in the Appendix summarizes the proposed organization of programs in selected DHS bills.)

After the Administration unveiled its proposal, DHS proposals in the House and Senate initially paralleled the Administration proposal.¹⁴ H.R. 5005, as introduced in the House, would have consolidated a number of agencies with preparedness functions into the Emergency Preparedness and Response directorate. S. 2452, as agreed to by the Senate Committee on Governmental Affairs in July 2002, would have fulfilled the Administration's goal and relocated nearly all those functions in the EPR directorate.¹⁵ Subsequent bills in the Senate, including S.Amdt. 4738 to H.R. 5005 (Gramm/Miller Amdt.) followed the same pattern.

Congress, however, ultimately separated the functions of the ODP from the other agencies with preparedness functions. The House-passed version of H.R. 5005, as well as the Senate-passed version (S.Amdt. 4901), transferred ODP to the Border and Transportation Security directorate.¹⁶ This transfer was arguably the most debated issue related to state and local preparedness, in that critics asserted that it separated ODP from its functional home in the Emergency Preparedness and

¹¹P.L. 107-296, sec. 430(c).

¹²Examples of federal agencies offering preparedness assistance to states and localities, but not proposed for transfer to the DHS, include the Federal Bureau of Investigation (FBI), which offers training to law enforcement officers, and the U.S. Army Medical Research Institute of Infectious Disease (AMRIID), which offers response training to public health officials.

¹³H.R. 5005 (as introduced on behalf of the Administration), sec. 502. Also see Office of Homeland Security, *Department of Homeland Security*, (Washington: June 2002), p. 16. Available at: [<http://www.whitehouse.gov/deptofhomeland/book.pdf>], visited June 28, 2002.

¹⁴Some congressional DHS proposals, however, pre-dated the Administration's proposal.

¹⁵S. 2452 (as agreed to by the Senate Governmental Affairs Committee, July 2002), sec. 134(c).

¹⁶The House-passed version of H.R. 5005 also transferred to the Border and Transportation Security directorate the National Domestic Preparedness Office (NDPO) and Domestic Emergency Support Team (DEST). The enacted bill, however, transfers the functions of these two units to the Emergency Preparedness and Response directorate. See Table 1.

Response directorate (EPR). This issue may also frame future debate over the implementation of the new department.

Legislation in the 108th Congress. At the time of this writing, a limited number of introduced bills would affect the structure of assistance programs in the DHS. A number of bills propose new assistance programs for states and localities. S. 87, for example, proposes a Homeland Security Block Grant, that would fund improvements in preparedness and infrastructure security. Other examples include H.R. 105 and S. 6.

S. 45 would enhance the authority and responsibilities of the Office for State and Local Government Coordination (OSLGC), which was created to coordinate departmental activities relating to states and localities. The bill proposes the following additional duties for the OSLGC:

- submit to Congress an annual report on the needs and priorities of state and local first responders,
- perform a needs assessment that identifies overlapping federal activities,
- establish liaisons in each state, and,
- establish a Federal Interagency Committee on First Responders and Cross-Jurisdictional Issues and an advisory council for the interagency committee.¹⁷

Issues Affecting State and Local Preparedness

This report discusses selected policy issues that may surface as the 108th Congress monitors the implementation of the new department and evaluates efforts to improve state and local preparedness for terrorism. These issues arose as the 107th Congress debated the structure and responsibilities of the new department, and are likely to remain pertinent. Specifically, this report examines the following issues:

- 1) How will preparedness programs in the new department be administratively coordinated and integrated?;
- 2) Will preparedness programs take an “all-hazards” approach or focus exclusively on terrorism preparedness?; and,
- 3) What is the appropriate focus of the department’s programs focusing solely on terrorism preparedness programs?

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 the new DHS,¹⁸ and the degree of authority the DHS will need to effectively evaluate state and local assistance programs.

¹⁷S. 45. (108th Cong.)

¹⁸The Homeland Security Act transfers from HHS to DHS the Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System.

Administrative Coordination of Preparedness Programs

The Administration proposal stated 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.”¹⁹ 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).²⁰ Some of the programs focusing on first responder preparedness, such as the Nunn-Lugar-Domenici program within the Office for Domestic Preparedness, have been previously transferred from one department to another.

The multiplicity of agencies offering assistance, and the subsequent shifting of agency responsibilities, have led to some frustration and confusion among state and local officials attempting to secure federal funds. In addition, state and local officials reportedly assert that the application process is burdensome and inconsistent.²¹ Many observers have suggested that improving administrative coordination of programs, and offering state and local officials a single point-of-contact, should be primary goals of the new department.

Analysis. As discussed above, the Homeland Security Act consolidated into the new department most federal agencies and offices with functions related to state and local preparedness. Most of these functions will be administered by the department’s Emergency Preparedness and Response directorate (EPR), but the Office for Domestic Preparedness (ODP) will be placed in the Border Transportation and Security directorate (BTS). Arguably, the Act enhanced the duties of the ODP, making it responsible for the department’s domestic preparedness assistance programs.²²

Federal, state, and local coordination duties have also been assigned to other directorates. The Information Analysis and Infrastructure Protection directorate, for example, will be responsible for creating policies on information sharing.²³ The Office of Science and Technology, will establish performance standards for law

¹⁹Office of Homeland Security, *Department of Homeland Security*, p. 16.

²⁰For descriptions of current programs, see CRS Report RL31227, *Terrorism Preparedness: Selected Federal Assistance Programs*, coordinated by Ben Canada.

²¹This perception is documented in several studies. See: 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.

²²P.L. 107-296, sec. 430(c).

²³P.L. 107-296, sec. 201(d)(8).

enforcement technologies.²⁴ And, the Homeland Security Institute will also conduct standardization activities.²⁵

Some observers maintain that dividing coordination functions among multiple directorates 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. Differences in traditional practices and regulations issued by the directorates 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.²⁶ Second, they point out that state and local officials might 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 shop" for state and local assistance.

Congress has arguably addressed these potential problems through the establishment of an Office for State and Local Government Coordination (OSLGC) within DHS, which will oversee all departmental activities pertaining to state and local government. The Homeland Security Act requires 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.²⁷

This coordination office will essentially seek to "coordinate the coordinators." Questions remain, however, about the office's relationship with other directorates in the new department, and the extent of the office's authority and duties. Some of the duties listed for the OSLGC arguably overlap with the listed duties of the Office for Domestic Preparedness, such as coordinating preparedness efforts at the federal, state, and local level, and monitoring terrorism and preparedness grant programs.²⁸

²⁴P.L. 107-296, sec. 232(b)(3).

²⁵P.L. 107-296, sec. 312(c)(4).

²⁶Sydney J. Freedberg, Corine Hegland, and Margaret Kriz, "Three Departments Offer Important Lessons on Reorganization," *National Journal*, June 15, 2002, pp. 1770-1772.

²⁷P.L. 107-296, sec. 801. Added by H.Amdt. 587 to H.R. 5005 (Rush), agreed to July 25, 2002; Also see S. 2452 (as agreed to by the Senate Governmental Affairs Committee, July 2002), sec. 137(b).

²⁸P.L. 107-296, sec. 430(c). The Act also states that the terrorism-related activities carried out by the Office of National Preparedness (ONP) within FEMA will be transferred to the ODP. In May 2001, President Bush instructed FEMA to establish the ONP to coordinate
(continued...)

The OSLGC's duties may also overlap with the duties of the Emergency Preparedness and Response directorate (EPR), which is responsible for ensuring the effectiveness of emergency response providers.²⁹

Policy Approaches.

Enhance the Authority of the Office for State and Local Government Coordination (OSLGC). If the DHS is to have a single, coordinated approach to assisting states and localities, the OSLGC may need authority to review, and possibly create, procedures and regulations used by the directorates of Emergency Preparedness and Response (EPR), Border and Transportation Security (BTS), and others. If the office has too little authority, it may be ineffective and an uncoordinated approach to providing assistance could result. If it has too much authority, however, the office might interfere with the ability of agencies within DHS to conduct their mission.

The mission of the OSLGC arguably could be enhanced by incorporating into it a clearinghouse on emergency preparedness programs, as proposed in S. 2452. The Senate bill proposed that a National Clearinghouse on Emergency Preparedness would 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.³⁰ This approach could address the concerns of state and local officials about the lack of a single point of contact.

Another proposal that could enhance the OSLGC's authority, according to critics of the current arrangement, was a section in S. 2452 that would have appointed a DHS liaison to each state to coordinate federal assistance, assess state and local needs, and provide training and information (see Table 1 in Appendix). The Senate bill would have created a Chief Homeland Security Liaison and required the position to report annually on state and local needs, federal program effectiveness, and recommendations for changes in federal statutes. Furthermore, it would have created a Federal Interagency Committee on First Responders and instructed it to ensure coordination among federal agencies involved with state and local preparedness.³¹ These proposals have been reintroduced in the 108th Congress in S. 45.

Place Coordination Activities in the EPR Directorate. Another alternative would be to transfer all coordination and assistance activities within the department's EPR directorate, including grant programs, standard setting, and intelligence sharing, among others. This, arguably, would be an effective method of creating a "one-stop

²⁸(...continued)

all federal programs dealing with weapons of mass destruction consequence management and to coordinate with state and local governments to ensure they receive adequate planning, training, and equipment. See sec. 430(c)(8).

²⁹P.L. 107-296, sec. 502(1).

³⁰S. 2452 (as agreed to by the Senate Governmental Affairs Committee, July 2002), sec. 152.

³¹S. 2452 (as agreed to by the Senate Governmental Affairs Committee, July 2002), sec. 137(c), (d), and (e).

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 directorate, but the federal officials with the desired expertise could reside in another DHS directorate 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 directorate could make it administratively 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 directorate could also detract resources from the directorate’s natural disaster preparedness and response mission.

Debate Over the All-Hazards Approach

The Homeland Security Act directs the DHS Secretary to ensure that federal, state, and local responders are prepared to respond to all disasters, including terrorist attacks. FEMA, which will serve as the cornerstone of the new department’s Emergency Preparedness and Response directorate (EPR), has traditionally advocated this “all-hazards” approach to emergency management. In general, the all-hazards approach involves developing comprehensive capabilities for responding to a range of disasters, including natural disasters and terrorist attacks, rather than developing separate and distinct capabilities to respond to one type of disaster.³²

FEMA is perhaps best known for assistance after disasters, but the agency is also responsible for helping states and localities prepare for natural disasters, 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.³³

Analysis. Some analysts and policy makers fear that incorporating FEMA into the new DHS will detract from the FEMA’s mission to assist states and localities to prepare for natural disasters, and also adversely affect 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 11th) the devotion to terrorism planning has already affected the FEMA mission. All the momentum for pre-disaster mitigation work with communities has been lost.

³²U.S. Federal Emergency Management Agency, *Guide for All-Hazard Emergency Operations Planning*, SLG-101, Sept. 1996, p. iii.

³³For more information on FEMA’s natural disaster activities, see CRS Report RL31670, *Transfer of FEMA to the Department of Homeland Security: Issues for Congressional Oversight*, 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/>].

Folding FEMA into a homeland or national security agency will seriously compromise the nation's previously effective response to natural hazards.³⁴

The Brookings Institution analysis of the DHS proposal echoed 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.³⁵

On the other hand, the Administration has emphasized that integration into the DHS will not interfere with FEMA's natural disaster preparedness activities. It suggested 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 government efforts that promote structures and communities that have a reduced chance of being impacted by disasters.³⁶

Policy Approaches.

Maintain the All-Hazards Approach. The Homeland Security Act instructs the DHS Secretary to maintain FEMA's current activities in natural disaster preparedness and pre-disaster mitigation. Section 507 of the Act seemingly affirms the all-hazards approach, instructing FEMA to maintain a "... comprehensive, risk-based emergency management program."³⁷ This approach may allow DHS to improve terrorism preparedness, through efforts by ODP, while preserving FEMA's resources and expertise in natural disaster preparedness and disaster response.

This approach may address the concerns of some policy makers concerned about FEMA's inclusion in the new department. Some House committees expressed such concerns 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

³⁴James Lee Witt and Associates, *Department of Homeland Security and FEMA* (Washington: 2002), unpublished.

³⁵Brookings 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.

³⁶see U.S. President (Bush), *Department of Homeland Security*, p. 11.

³⁷P.L. 107-296, sec. 507(a)(2). Added by H.Amdt. 575 (Young) to H.R. 5005, agreed to July 25, 2002.

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.³⁸ The House Transportation and Infrastructure Committee, which had 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.³⁹

Give DHS Officials Discretion. 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 the 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.⁴⁰

Debate Over Content of Terrorism Preparedness Programs

The Office for Domestic Preparedness (ODP) helps states and localities prepare for terrorist attacks by providing training, equipment grants, technical assistance and other forms of assistance. The Homeland Security Act separated ODP from FEMA and the other agencies in the Emergency Preparedness and Response directorate (EPR) by locating ODP in the Border and Transportation Security directorate (BTS). The Act further instructs the office to coordinate state and local preparedness efforts and supervise federal terrorism preparedness programs. It also assigns to ODP the terrorism-related functions of FEMA’s Office of National Preparedness.⁴¹ This effectively splits responsibility for preparedness assistance programs between the directorates of Border and Transportation Security (BTS) and Emergency Preparedness and Response (BTS).⁴²

Analysis. As outlined in the federal Interagency Domestic Terrorism Concept of Operations Plan (CONPLAN), terrorism response may be divided into *consequence management*, which involves life-saving and property-saving efforts and recovery activities, and *crisis management*, which involves criminal

³⁸U.S. Congress, House Committee on the Judiciary, “Summary of H.R. 5005 Markup,” 107th Cong., 2nd sess., July 12, 2002. Available at: [<http://www.house.gov/judiciary/homeland071502.PDF>], visited July 22, 2002.

³⁹U.S. Congress, House Committee on Transportation and Infrastructure, “Explanation of Manager’s Amendment to H.R. 5005,” 107th Cong., 2nd sess., July 11, 2002. Available at: [<http://www.house.gov/transportation/homelandsecurity/amendmentexplanation.html>], visited July 19, 2002.

⁴⁰For example, see Witt and Associates, *Department of Homeland Security and FEMA*; and Brookings Institution, *Assessing the Department of Homeland Security*, p. vi.

⁴¹P.L. 107-296, sec. 430(c).

⁴²Issues relating to the Border and Transportation Security directorate are discussed in CRS Report RL31549, *Department of Homeland Security: Consolidation of Border and Transportation Security Agencies*, coordinated by Bill Krouse.

investigations and the pursuit of terrorists.⁴³ The array of domestic preparedness programs in place before the DHS reorganization can be grouped into these two categories. Assistance provided by FEMA, including training courses, has traditionally focused on only consequence management activities, no matter the type of disaster. Training and other assistance offered by the ODP, however, treats terrorist attacks as criminal acts, and thus takes place in a crisis management and law enforcement context.

Advocates of the crisis management approach contend 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. The Senate Appropriations Committee, in its work on FY2003 appropriations bills, expressed such sentiments:

Responding to an act of terrorism is manifestly different than responding to natural disasters. Grouping terrorism preparedness and response, especially as it concerns weapons of mass destruction (WMD), under an emergency management “all hazards” approach puts our first responders, as well as the general public, at risk. Treating both types of catastrophe response in the same manner does not account for the fundamental differences between the national security/law enforcement response to terrorism and the emergency management response to terrorism.⁴⁴

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.⁴⁵

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.”⁴⁶ 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,

⁴³The CONPLAN is available at the FBI web site: [<http://www.fbi.gov/publications/conplan/conplan.pdf>], visited July 1, 2002.

⁴⁴U.S. Congress, Senate Committee on Appropriations, *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill*, report to accompany S. 2778, 107th Cong., 2nd sess., S.Rept. 107-218 (Washington: GPO, 2002), pp. 44-49.

⁴⁵Paul. M. Maniscalco and Hank T. Christen, *Understanding Terrorism and Managing the Consequences* (Upper Saddle River, NJ: Prentice Hall, 2002), p. 228.

⁴⁶Office of Homeland Security, *Department of Homeland Security*, p. 12.

evidence collection techniques, rights of suspects and detainees, or the like.”⁴⁷ Secretary of Homeland Security Tom Ridge has also stated that during a response to a terrorist attack, state and local first responders would likely concentrate on saving lives and not on criminal investigations.⁴⁸

Despite the Bush Administration’s objectives, some policymakers have emphasized that the distinction between crisis management and consequence management should be maintained, and that ODP is the appropriate agency to administer crisis management programs. Assigning ODP to the Border and Transportation Security directorate reflects the concern of key policymakers that ODP would lose its focus and expertise on crisis management and law enforcement training if transferred to the Emergency Preparedness and Response directorate, the cornerstone of which is FEMA.⁴⁹

Policy Approaches.

Develop Separate and Distinct Assistance Programs. Congress has effectively endorsed this approach in the Homeland Security Act, which separates assistance programs between two directorates. The EPR directorate, with FEMA as its cornerstone, will assist states and localities in overall emergency preparedness using the all-hazards approach. The BTS directorate, through the ODP, will focus exclusively on preparing states and localities for terrorist attacks.

This approach is arguably consistent with the Administration’s stated goal of consolidating all terrorism preparedness programs into one department. It also addresses the concerns of some observers who have argued that FEMA does not have the necessary expertise to train first responders in crisis management and law enforcement techniques.⁵⁰ The separation of assistance programs between two directorates, however, may result in a lack of coordination among program officials in certain areas. Also, this approach may not address the concerns of state and local officials about the fragmentation in federal training opportunities.

Full Integration of Assistance Programs. Offering training in a law enforcement context *and* developing a single, department-wide approach to providing assistance could both be viewed as desirable goals. Thus, another approach could be to incorporate the functions of FEMA and ODP in a single directorate. The Bush Administration, as well as several Members of Congress, proposed giving the

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

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

⁴⁹See generally, Jason Peckenpaugh, “Homeland Security Bill Would Reorganize Federal First Responder Programs,” *Government Executive*, Nov. 14, 2002.

⁵⁰See 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.

Emergency Preparedness and Response directorate (EPR) lead responsibility for assisting state and local responders.⁵¹ Congress could instruct the EPR directorate to include appropriate law enforcement techniques in its terrorism-oriented training, as currently practiced by ODP. 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."⁵²

This approach, however, could delay the availability of training and other assistance for first responders because the new EPR directorate might require some time to integrate the ODP and FEMA programs, including training curricula. This approach might also meet resistance from some policy makers and state and local officials who have supported ODP's continued separation from FEMA.⁵³

Establish a Commission. Another possible alternative would be instruct a commission to evaluate the practice of separating crisis and consequence management activities in response to terrorism. A commission could specifically study the costs and benefits of including law enforcement techniques in terrorism-oriented training for first responders. Considering that implementing the DHS reorganization will require several months, if not years, there may be sufficient time for a commission to thoroughly study such issues. It could include representatives from all first responder communities at all levels of government and make recommendations for the DHS assistance programs and training curricula.

Conclusion

As the 108th Congress oversees the implementation of the Homeland Security Act and the creation of the new Department of Homeland Security, it will likely address a wide array of issues pertaining to state and local preparedness. Many of the issues that arose as the 107th Congress debated the department's formation may be revisited, including the effective coordination of programs, the all-hazards approach, and the appropriate focus of terrorism preparedness assistance.

Related CRS Products

CRS Report RS21302, *Assistance to Firefighters Program*, by Len Kruger.

CRS Report RL31549, *Department of Homeland Security: Proposals to Consolidate Border and Transportation Security Agencies*, coordinated by Bill Krouse

⁵¹See S. 2452, sec. 134. Also see Office of Homeland Security, *Department of Homeland Security*, p. 11.

⁵²Maniscalco and Christen, *Understanding Terrorism*, pp. 254-255.

⁵³See International Brotherhood of Police Officers, letter to Hon. Lamar Smith, March 8, 2002.

CRS Report RS21377, *Federal Emergency Warning Systems: An Overview*, by Shawn Reese.

CRS Report RL31475, *First Responder Initiative: Policy Issues and Options*, by Ben Canada.

CRS Report RS21400, *FY2003 Appropriations for First Responders: Fact Sheet*, by Ben Canada and Shawn Reese.

CRS Report RL31680, *Homeland Security: Standards for State and Local Preparedness*.

CRS Report RS21348, *Risk Assessment in the President's National Strategy for Homeland Security*, by Rob Buschmann.

CRS Report RL31266, *State and Local Preparedness for Terrorism: Policy Issues and Options*, coordinated by Ben Canada.

CRS Report RL31227, *Terrorism Preparedness: Catalog of Selected Federal Assistance Programs*, coordinated by Ben Canada

CRS Report RL31670, *Transfer of FEMA to the Department of Homeland Security: Issues for Congressional Oversight*, by Keith Bea

Appendix

Table 1. Proposed Organization of Domestic Preparedness Programs in Selected DHS Bills

Issue	H.R. 5005 (as introduced on behalf on the Administration, 6/24/02)	H.R. 5005 (as passed by House, 7/26/02)	S. Amdt. 4471 to H.R.5005 (Lieberman Amdt., as agreed, 7/25/02)	P.L. 107-296 (as enacted, 11/25/2002)
<p>Domestic Preparedness functions transferred to the <i>Emergency Preparedness and Response Directorate</i> (EPR) of the DHS</p>	<ul style="list-style-type: none"> • Federal Emergency Management Agency • 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 • Strategic National Stockpile (HHS) <p>[sec. 502]</p>	<ul style="list-style-type: none"> • Federal Emergency Management Agency • Office of Emergency Preparedness (HHS), including the National Disaster Medical System and Metropolitan Medical Response System • Strategic National Stockpile (HHS) <p>[sec. 502]</p>	<ul style="list-style-type: none"> • Federal Emergency Management Agency • National Domestic Preparedness Office (FBI) • Office of Domestic Preparedness (DOJ) • Office of National Preparedness (HHS), including the Noble Training Center, the Metropolitan Medical Response System, National Disaster Medical System, Disaster Medical Assistance Teams, and Disaster Mortuary Operational Response Teams, special events response, and citizen preparedness programs. • Strategic National Stockpile (HHS) • Select Agency Registration Program (HHS and USDA) <p>[sec. 134(c)]</p>	<ul style="list-style-type: none"> • Federal Emergency Management Agency (except functions of the Office of National Preparedness relating to terrorism) • National Domestic Preparedness Office (FBI) • Domestic Emergency Support Teams (DOJ) • Office of National Preparedness (HHS), including the Metropolitan Medical Response System, National Disaster Medical System • Strategic National Stockpile (HHS) • Integrated Hazard Information System (FIRESAT) (transferred from NOAA) <p>[sec. 503]</p>

Issue	H.R. 5005 (as introduced on behalf on the Administration, 6/24/02)	H.R. 5005 (as passed by House, 7/26/02)	S. Amdt. 4471 to H.R.5005 (Lieberman Amdt., as agreed, 7/25/02)	P.L. 107-296 (as enacted, 11/25/2002)
Domestic Preparedness functions transferred to the <i>Border and Transportation Security Directorate (BTS)</i> of the DHS	No similar provision.	<ul style="list-style-type: none"> • Office for Domestic Preparedness (DOJ) • National Domestic Preparedness Office (FBI) • Domestic Emergency Support Teams (DOJ) [sec. 402]	No similar provision.	<ul style="list-style-type: none"> • Office for Domestic Preparedness (DOJ) [sec. 403] Those elements of the Office of National Preparedness (within FEMA) relating to terrorism will be consolidated into the Office for Domestic Preparedness. [sec. 430(c)(8)]

Issue	H.R. 5005 (as introduced on behalf on the Administration, 6/24/02)	H.R. 5005 (as passed by House, 7/26/02)	S. Amdt. 4471 to H.R.5005 (Lieberman Amdt., as agreed, 7/25/02)	P.L. 107-296 (as enacted, 11/25/2002)
Responsibilities of the <i>Office for State and Local Government Coordination</i>	No similar provision.	<ul style="list-style-type: none"> • coordinating DHS activities relating to state and local government • assessing, and advocating for, the resources needed by states and localities under the national strategy • providing states and localities with information, research and technical support • developing a process for receiving input on the national strategy. [sec. 777]	<ul style="list-style-type: none"> • coordinating DHS activities relating to state and local government • assessing, and advocating for, the resources needed by states and localities under the national strategy • providing states and localities with information, research and technical support • developing a process for receiving input on the national strategy. [sec. 137(a) and(b)] Authorizes a Chief Homeland Security Liaison Officer; duties include annually reporting on state and local priorities and needs, assessing federal assistance programs; identifying duplicative federal activities. Each state shall have a homeland security liaison officer, responsible for coordinating DHS activities with first responders and relief organizations, providing assistance. [sec. 137(c)]	<ul style="list-style-type: none"> • coordinating DHS activities relating to state and local government • assessing, and advocating for, the resources needed by states and localities under the national strategy • providing states and localities with information, research and technical support • developing a process for receiving input on the national strategy. [sec. 801]