On November 25, 2002, President Bush signed into law the Homeland Security (HS) Act of 2002. The passage of the act was the latest example of how the White House is orchestrating our national efforts for homeland security.

Consider the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot) Act of 2001. The final version of the act was introduced in the House on October 23, 2001, passed on October 24, passed without amendment by the Senate on October 25, and signed into law by President Bush on October 26. This rapid endorsement took place after the President decided he did not approve of compromises worked out in the House and changed the legislation to exactly what the White House wanted, insisting on a quick vote. The Republican House leadership acceded to the administration’s demands and rewrote a “compromise” that House members were then called upon to approve, most without having read the 148-page measure.¹

The HS Act significantly modifies the national approach to terrorism and all other emergency events. It calls for merging 170,000 federal workers from 22 agencies into a single organization—the Department of Homeland Security (DHS). This has not been an easy task, and integrating the efforts of DHS with those of state and local governments as well as the responders who serve them is yet another mammoth mission. On February 28, 2003, President Bush took a key step in the integration of DHS and its relationship to state and local government by issuing Homeland Security Presidential Directive (HSPD) 5, which mandates steps for planning and incident management as well as emergency responder performance standards and sanctions. These policy changes must be scrutinized to assure that our nation’s approach to emergency management (EM) will progress in the direction best calculated to save lives and protect property.

The main objective of HSPD 5 is ensuring that all levels of government can work efficiently together, using a comprehensive approach to domestic incident management. To this end, it treats crisis management and consequence management as a single, integrated function, rather than as two separate functions, as was the case under Presidential Decision Directive 39.² HSPD 5 specifies the lead agencies for acts of terrorism and other major disasters, requires all federal agencies to cooperate with DHS in developing a National Response Plan (NRP) and a National Incident Management System (NIMS), and sets a timetable for those actions. (NIMS is the operational part of the NRP; hereafter, reference to the NRP includes NIMS.) President Bush also decided that all

Note: This article is informational only, and does not constitute legal advice. For legal advice, consult your own attorney.
emergency responders shall, in the future, be regulated by DHS, and specified penalties for responders who do not comply with federal regulation of their activities, beginning in federal FY 2005.

**NATIONAL RESPONSE PLAN—CHANGING THE NAMES?**

HSPD 5 directs the Secretary of DHS to “integrate Federal Government domestic prevention, preparedness, response, and recovery plans into one all-discipline, all-hazards plan.” Federal plans, including the National Contingency Plan (the federal approach to hazardous materials response) and the Federal Radiological Emergency Response Plan, will be conformed with NRP through addenda, meaning they will continue to stand alone as they did under the Federal Response Plan (FRP). Other plans will be developed as part of the NRP as needed.

All federal agencies must adopt and participate in the NRP. The NRP describes itself as creating a structure for national policy and direction for federal support to state and local incident managers and for control by federal authorities, under appropriate circumstances. Pursuant to the HS Act, the Secretary of DHS is the principal federal officer for domestic incident management whose duties include coordinating federal operations to prepare for, respond to, and recover from terrorist attacks. At the federal level, the NRP is the tool through which the Secretary accomplishes these goals. Federal, state, and local governments are all required to adopt NIMS.

NIMS describes itself and the NRP as “new paradigms” for domestic incident management. “But just because something is new doesn’t necessarily mean that it is better,” said J.R. Thomas, president of the International Association of Emergency Managers (IAEM). Indeed, a source in FEMA characterized the NRP as “just the old FRP with the names changed.” That the stand-alone plans of other federal agencies will continue their separate status, albeit with addenda to conform them to the NRP, underlines the unchanged reality behind the mask of new terminology. In actuality, the NRP and NIMS both embody many proven concepts, although expanded somewhat and renamed.

The NRP’s changes in nomenclature were a main source of discussion at a recent meeting of local, state, and federal emergency responders and emergency managers. One attendee cautioned, “We in emergency management have a very definite definition of mitigation. We need to make sure that those things we have been doing for years in the mitigation field are not lost somewhere by a definition another group might have. It needs to be spelled out.” According to a more outspoken critic, the NRP and NIMS create “a welter of entities, terms, and acronyms and that existing, commonly accepted terminology is buried under a confusing layer of bureaucratese.”

The NRP changes the four phases of EM—mitigation, preparedness, response, and recovery—into five domains of incident management activities—awareness, prevention, preparedness, response, and recovery—and refers to them using the umbrella term of incident management. This change conflicts with NFPA 1600, the Standard on Disaster/EM and Business Continuity Programs, which specifies “these [program] elements shall be applicable to the phases of mitigation, preparedness, response, and recovery.” These changes in terms may confuse emergency responders/managers, who are used to “incident management” applying to the more evolved management approach to incident command at the scene of events.

**NIMS—A NEW STRUCTURE WITH EVOLVED CONTENTS**

NIMS is not the same as the National Interagency Incident Management System (NIIMS). The five aspects of NIMS that derive from NIIMS are command and incident management; system preparedness; resource management; communications, information, and intelligence management; and science and technology management. A goal of NIMS is the creation of a common operating picture to promote information flow at all levels of government, in order to assist in prioritizing resource allocation during planning and response. Existing incident command law and standards have long required control of information flow.

NIMS establishes local, state, and federal emergency Prevention and Preparedness Councils (PPCs), which integrate awareness, prevention, and preparedness activities into a unified structure that provides an ongoing multi-agency coordinating system (MACS) for all potential hazards.
The NIMS document includes many complex charts illustrating how the system is projected to work in the field. While its operation is anticipated to be smooth and trouble-free, one observer says that NIMS “will totally bewilder the local emergency responder and confuse most people currently using Incident Command System/Unified Command (ICS/UC) and working within an emergency management system. The diagrams do not show clear lines of communication up or down. The lines of authority are also confusing . . . . It is complex and hard to follow.”

The PPC is projected to be the preparedness complement to an Emergency Operations Center (EOC). In fact, the PPC appears to institutionalize an expansion of the Project Impact mitigation effort established under the direction of James Lee Witt at FEMA. NIMS’ version of the Project Impact Program will extend to all levels of government, but excludes the significant role that the private sector plays in Project Impact.

Incorporating national and regional EOCs, MACS is to provide “standardized mechanisms for managing the flow of financial and physical resources before, during, and after an incident.” Wise resource management has always been one of the primary goals of the incident command system.\(^7\) The multi-agency coordinating group (MAC Group) will prioritize among incidents and associated resource allocations; deal with conflicting agency policies; and give strategic guidance and direction to EOCs. MACS “operates at all levels, across all domains, for all contingencies.” Again, MACS parallels existing organizations created pursuant to the FRP, but expands their roles.

MACS is another source of criticism. One expert at the local level asks, “Why are we creating a new layer of bureaucracy? The EOC already has a group called Situation Analysis that constantly reviews incoming information on the disaster or emergency. The EOC also has a group called Resource Management that identifies resources and allocates them as needed. Adding MACS just adds another layer of organization that is not needed. Haven’t the writers of the NRP ever worked in a State or Local EOC? All MACS will do is slow down the process of getting critical resources to priority emergency situations!”

NIMS states that local EOCs will be assisted by, and perhaps staffed by, local PPC members in the course of a local response. During a more sizable incident, the state and federal PPCs will be drawn in through MACS. The Federal Incident Manager will give assistance, though Area Command/Unified Command will control the incident at the local region. A Joint Operations Center (JOC) will be in close contact with the FBI’s Strategic Information and Operations center at the national level. The JOC will match up law enforcement’s needs with the local EOC and Area Command in event of a terrorism incident. The FRP’s approach to law enforcement is virtually identical to the NRP’s approach.

Rather than working through existing EM and ICS/UC structures, NIMS intends to improve coordination of all four phases of EM, especially mitigation and preparedness. However, there is no reason to construct an organization to substitute for EM. As a system, EM works very well.

The “all-hazards” approach has long guided the discipline of EM. Under Witt, FEMA amplified its emphasis on mitigation and preparedness through programs like Project Impact. FEMA continues to stress mitigation and preparedness, and probably does a better job dealing with these matters than at any time in its history.

WHITHER NATURAL HAZARDS?

DHS Secretary Ridge appointed Admiral James M. Loy, head of the Transportation Safety Administration (TSA), to be the NRP Task Force Director. (Reportedly, he is no longer in charge of the effort.) Loy’s people were responsible for drafting the NRP. In fact, the work was outsourced to the Rand Corp. as primary contractor\(^4\) through TSA, although DHS personnel closely supervised the task. The reader may experience some concern at the TSA’s delegation of this duty to the private sector rather than to experienced FEMA planners. Tasking TSA to write the NRP would appear to give credence to the worries of emergency responders that, in the all-hazards world, one hazard—terrorism, with its emphasis on law enforcement—would drive the agenda for all mitigation and preparedness steps. Such an approach would give short shrift to FEMA’s traditional emphasis on
natural disasters. (One expert claims that the major function of the NRP and NIMS is to serve as a mechanism to get additional funding for law enforcement.) Emergency managers worry that this might result in an unbalanced pouring of funds into anti-terrorism, although, to date, natural disasters have had a far greater financial impact on the nation.

The NRP has omitted several important matters. One expert states that “two-thirds of the response community, fire and emergency medical services, seems to be ignored in the NRP. Is that because the NRP is not truly oriented to an all-hazard, all-discipline plan?”

Recent discussions between DHS and interested groups have revolved around the topic of the NRP’s incorporation of all hazards. One participant said, “Even though some of these federal resources in the NRP are not needed for natural disasters, we need to remember that this is still the same plan we’re going to use for that.” Although the NRP includes many law enforcement aspects new to EM, he said, “We have to make sure that we don’t lose sight of what we currently do and what we have been doing.”

Section 1513 of the HS Act eliminated the National Fire Administrator and Federal Insurance Administrator positions as Presidential appointments with Senate confirmation. This development is another indicator of a sea change, moving away from natural hazards in national priorities for preparedness. Eliminating Senate confirmation of the positions also lessened oversight even as it removed important voices for emergency responders.

**RESPONDER ISSUES**

While much of the NRP is similar to the FRP, there are key distinctions that impact responders. The section on Training and Continuous Improvement directs the Secretary to create a “national system to plan, equip, train, exercise, test, and evaluate and to provide standards and credentialing for homeland security.” This instruction will result in a new federal bureaucracy regulating and credentialing every responder in contact with homeland security.

All responsibilities formerly shouldered by FEMA are now in the domain of DHS. These include assistance to responders, such as firefighters, who may be activated in the event of a terrorist attack, although their day-to-day efforts are more frequently directed to emergencies resulting from other causes. Since DHS now controls fire safety, funding, and training, in the future the NRP may be cited as the authority for new nationwide firefighter safety and training standards. The volunteer fire service may be confronted with more onerous training requirements, at the same time as enrolling new members gets more difficult.

The language of HSPD 5 reinforces this interpretation of the NRP due to its requirement, starting in federal FY 2005, that outlay of all federal preparedness grants, contracts or other activities be preconditioned on adherence to NIMS. Historically, FEMA has required, for payout of EM performance grants, accomplishment of “performance outputs.” Following full adoption of NRP and NIMS, that practice will apply to all types of responder activities. New requirements may force small rural emergency response organizations out of existence, potentially leaving parts of the nation without EMS coverage or fire protection.

The question of whether it is either possible or desirable for the federal government to regulate local responders requires careful consideration by all stakeholders. Currently, responsibility for overseeing responders largely rests on state and local governments. Regulatory and training schemes exist at the state level for members of the EMS, firefighters, and law enforcement. The content and complexity of these systems varies from state to state. States have different standards on matters such as whether an EMS paramedic provider must provide 24-hour service.

A key characteristic of the current system is its flexibility. A rural service that wants to avoid purchasing an expensive item of equipment mandated by a state agency may typically apply for a rule variance and get an answer in 30 days. State agencies know the characteristics of different parts of their jurisdictions and can make informed decisions regarding the advisability of granting such variances. State emergency response regulatory agencies are frequently staffed by people with emergency responder backgrounds, whose frontline experience helps the agencies craft prompt and flexible responses to regulated entities.
A new federal bureaucracy regulating local responders could be a good idea, but it might also be an unwieldy, and unresponsive dinosaur. When one contemplates the federal government’s track record as a regulator, flexibility and speed are not terms that spring to mind. Indeed, imposing new federal standards on responders flies in the face of ongoing efforts to decrease federal regulation.

These massive changes in the way responders will be trained, regulated, and certified come at a time when the responder community is troubled regarding its role in a terrorism response. A recent survey found that “a majority of emergency responders feel vastly underprepared and underprotected for the consequences of chemical, biological, or radiological terrorist attacks.”

National regulation of local responders could either be the solution or the genesis of greater difficulties, particularly during transition from state and local regulation to control by a federal bureaucracy.

This leaves aside the question of whether it makes sense to impose common training and equipment requirements on, for example, an urban fire department serving an industrial and chemical manufacturing center, as on a rural service in the west whose major calls are usually wildfires. Furthermore, this effort may amount to no more than reinventing a system already in place that works well by most accounts.

At this moment, every state and commonwealth in the United States has a training organization that provides fire, police, EMS, and emergency management training to the emergency response community as well as elected officials and the public/private sectors . . . . [T]hese training organizations/systems are well established and have a high level of confidence placed in them by the emergency response community . . . . If we are going to reach the largest number of First Responders with performance and threat-based training, then the existing systems should lead the effort.

No doubt, the agency will go forward with nationwide responder regulation as required by President Bush in HSPD 5. However, DHS may lack the legal power to regulate the local responder community, despite its authorization in the HS Act. The President’s decision to regulate responders federally might be contested in the courts.

### State and Local Adoption Issues

The new structure may eventually produce a situation similar to that of Local Emergency Response Committees (LEPCs) and State Emergency Response Commissions (SERCs). The Emergency Planning and Community Right to Know Act (EPCRA) created these structures to manage preparedness for releases of extremely hazardous substances. As with LEPCs and SERCs, the same overburdened state and local public servants will be required to include added meetings and organizational responsibilities to their hectic calendars (although NIMS does not make public participation a central concept of operations.) While some financial support will be available from the federal government for responders, none has been established yet for PPCs and MACS.

The Council of Foreign Relations’ recent Rudman Report on responder resources, Emergency Responders: Drastically Underfunded, Dangerously Unprepared, recognizes unfunded requirements adding up to $98.4 billion. The PPCs and MACS are more unfunded federal mandates whose price tag must be added to that sum. A member of the fire community voiced a concern of many local governments: “Local municipalities are tired of setting up and funding ‘special groups.’ The MAC Group is one of these.”

As usual, the federal government’s drafting process failed to take into account state and local requirements that must be complied with in order to adopt the NRP and NIMS for all levels of government. State and local governments can only change the existing EM structure through the legislative process. The realities of state and local political processes are not referenced in the broad strokes of the PCC and MACS.

The NRP does not contain draft legislation that will need to be adopted by other partners in the federal system if the “new paradigm” is to prevail. The National Governors Association (NGA), through the National Emergency Management Association (NEMA), would be the logical vehicle for creating consensus model...
legislation to adopt the NRP at the state and local levels. Such approval, however, could take a significant amount of time. One indicator of the time that might pass before state adoption of the NRP is the history of the national Emergency Management Assistance Compact (EMAC). Congress passed EMAC in 1996; seven years later, all states and territories still have not joined it.11 NGA is a voluntary association, without power to require adoption of legislation such as EMAC.

FEEDBACK ON THE NRP AND NIMS

The federal government is not going forward with the NRP and NIMS without input from state and local government as well as some first responder groups. The process began in May, when DHS sent many state and local agencies preliminary drafts of the NRP, requesting feedback.

However, a few groups have criticized the manner in which DHS has involved these stakeholders. Some representatives of state and local emergency response and EM groups are “angry at being left for last in DHS’ policy-making queue.”4 They are concerned they were not involved in the drafting of the NRP and NIMS, despite being the parties most directly affected by the documents. DHS apparently proceeded this way to limit responders and emergency managers to reaction rather than making them part of the creative team. “DHS’s critics questioned . . . the sequence in which the Department brought emergency response stakeholders into the process, and the selection of Rand [Corp.] as the entity tasked with putting together the first draft. ‘Rand . . . [doesn’t] do much in the emergency management field, and frankly they didn’t cut it,’”4 said IAEM’s Thomas.

The feedback the agency received convinced DHS that there was a need to put together an NRP/NIMS State and Local Working Group to provide input on the documents, and hopefully obtain the state and local endorsement needed for the effort to succeed. The working group was a last-minute creation. As of August 4, 2003, DHS was putting together a forum composed of state and local government representatives as well as first responders for the purpose of obtaining feedback on the NRP and NIMS. According to a DHS employee who requested anonymity, the meeting took place during the week of August 11, 2003. As of August 4, the full list of invitees to the forum had not been determined but, according to the employee, as of August 5, the list had been determined and finalized for the closed-door meeting of the review group at the forum. One wonders whether the attendees had enough time before the meeting to make a meaningful evaluation of the documents and consult with their fellows.

Participants in the working group included NEMA, IAEM, the American Legislative Exchange Council, the National Conference of State Legislatures, the National Governors Association, the National Association of Counties, the National Association of Towns and Townships, the US Conference of Mayors, the Fraternal Order of Police, State Police, National Native America Native Law Enforcement Association, the International Association of Chiefs of Police, the National Security Agency, National Volunteer Fire Council, FEMA regional representatives, and the International Association of Fire Chiefs. Omitted were EMS, the first responder for at least half of the emergency events in the nation, and the North American Fire Training Directors, an organization for state fire training heads. Both groups have vital interests in the NRP and NIMS as well as insights that need to be a part of the mix.

At the meeting, the participants went through the NRP line by line, sharing the perspectives of their constituencies. There was much concern regarding new terminology. The working group met again in mid-September, to conduct a similar exercise for NIMS, and was told they will be called periodically to look at various issues.

Another question is the impact of the evaluators’ perspectives on the documents. While many would have preferred to be involved in drafting the documents rather than critiquing them after the fact, DHS is at least providing some involvement. DHS itself is constrained in terms of the content of the documents because they were drafted at the specific direction of President Bush in HSPD 5. That document’s mandates are the starting point for the NRP and NIMS, and their content tracks its requirements. Since one matter of much concern—the new requirement for federal regulation of responders—comes from the HS Act through
HSPD 5 as a command from President Bush, DHS is obligated to assure compliance. The President is also the source of enforced obedience of federal responder regulation through threats of funding cuts in Federal FY 2005. One improvement that may result from DHS’ belated decision to obtain input from the regulated entities is adjusting the way this mechanism works, either in the form of postponed compliance or waivers for organizations that can demonstrate undue hardship in conforming with the President’s new regulatory scheme. As one EM expert said, “National regulation doesn’t need to be done by some governing body. It needs to be done within the discipline. If there are standards for firefighting, then fire needs to implement those or upgrade them.” Such an approach would be less of an upheaval than creating a new federal bureaucracy to handle the matter entirely, but federal oversight will likely be needed to enforce the penalties for noncompliance.

The hurried time frame for this event suggests that input from those who must live with the product may have been something of an afterthought. But afterthought or not, DHS’ taking note (albeit after the documents were drafted, in a closed-door session with a limited group) of the rest of the country’s views is an encouraging development. This will be the first of an ongoing series of conferences. “We have a document that’s in draft form. We’re going to have to be continually looking at it. [T]his is a work in progress.”

The period for comment on the documents is unusually short. Apparently, at a meeting in early July, Secretary Ridge ordered that public and responder comments be directed to DHS through state EM directors on or before August 1. The involvement of state and local government and responder representatives in the process could cause this schedule to slip.

Another possible hurdle might have been the requirement that the Department of Defense (DoD) conduct its own review of such a proposed system. Once this was realized, the DoD began an expedited evaluation of the NRP. The comments that the DHS received from DoD are reportedly longer than the original NRP. No insurmountable obstacles remain that could block full incorporation of DoD into the NRP.

**NRp AS RULEMAKING**

Enacting the NRP according to the above timetable violates standards that would apply if normal rulemaking procedures were to be followed. The Administrative Procedure Act (APA) 5 USC §§ 551-706 sets out requirements for general rulemaking. The APA (5 USC § 551(4)) defines a rule as “the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy” or establish rules of practice while 44 USC § 3502(1) defines agency as “any executive department, military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government.”

DHS is an executive department. While plans are not rules generally, the all-encompassing nature of the NRP, its general application to all emergency preparedness and response activities, and its future effect are factors that tilt the balance toward its being a rule. Particularly persuasive is the fact that the NRP’s essence is the pervasive implementation and prescription of all-hazards homeland security policy for all levels of government. The NRP, through NIMS,
establishes—in extensive detail—rules of practice for emergency preparedness and response.

The argument that the NRP comprises a rule or regulation is rather persuasive. It would be further defined as a “major rule” if the NRP would be likely to result in an annual effect on the economy of $100 million or more. A full cost analysis would be required for such a determination, but it is likely that the NRP’s economic effect will be in excess of $100 million.

The APA has several types of rulemaking procedures. The basic rulemaking procedure, usually called “informal” or “notice and comment” rulemaking, is set out in 5 USC §553. The law requires three things: prior notice, normally achieved through publication in the Federal Register, § 553(b); an opportunity to participate by interested persons through submission of written comments containing data, views or arguments, § 553(c); and issuance of a final rule along with “a concise and general statement of [the rule’s] basis and purpose.”

DHS has specifically been granted rulemaking authority. FEMA, a constituent agency of DHS, has such authority independently.

The above timeline describes the planned process for adoption of the NRP. Even if DHS were to issue this material, as a rule, the approach would be flawed for several reasons. First, the NRP was not published in the usual manner as a Notice of Proposed Rule in the Federal Register—it was sent directly to a select number of interested parties. Second, the “public comment” period was to be approximately three weeks rather than 60 days, although the hastily called forum the week of August 11 indicates some flexibility in this regard. Third, the intent may have been to roll out the NRP after internal discussion among executive agencies and some field testing in the states. The requirements for a statement of basis and purpose as well as EO 12291 §3(c)’s Regulatory Impact Analysis do not appear to be part of the plan.

There appears to be time between the October 1, 2004 agency reviews and the January 1, 2005 implementation of the NRP for notice and comment if the NRP were to be issued as a rule. However, that leaves aside the status of the NRP during the period of June 1 to October 1, when the third rough draft is to be completed and sent to state EOCs for testing/training exercises.

Consideration of the NRP under the structure afforded by the rulemaking process would shed welcome light on what had—prior to the decision to convene the August 11 forum—otherwise been an internal matter between DHS and other federal agencies. Whether the NRP is enacted as a rule or not, it would certainly benefit from receiving input from all stakeholders, including those not invited to be members of the forum.

VOICES OF RESPONDERS AND EMERGENCY MANAGERS

The best way for responders and local emergency managers to have their voices heard on an ongoing basis as their future is decided is an amendment of the HS Act to create two independent ombudsman positions. The responder ombudsman should be an autonomous advocate who belongs to the established responder community. The EM ombudsman should be an equally independent local emergency manager. With such champions in place, the requirements of local responders and emergency managers would be given the priority they deserve, rather than being insincerely mentioned as a main concern while other agendas (often originating from the lobbyists and government contractors known as “beltway bandits”) prevail. A further step that would give a higher profile to state and local interests would be restoration of the National Fire Administrator and Federal Insurance Administrator positions as Presidential appointments with Senate confirmation.

The major difference that HSPD 5, the NRP and NIMS will create in the emergency response structure is an unprecedented expansion in federal power over state and local responders, including regulation and certification, under the threat of reduced funding. While the documents refer to federal, state, and local partnerships, they create the potential for almost total control by the federal government.

CONCLUSION

Once fully in place, HSPD 5, the NRP, and NIMS will result in some improvement in the nation’s preparedness and response capabilities. The objective of fully coordinating preparedness and response actions across all levels of government is indeed a valid one.
However, the responsibility of creating the new department from so many distinct parts is already enormous. One can only speculate as to whether the effort expended in concocting the NRP and NIMS structure might have been better spent improving the outstanding existing EM system.

The NRP’s major shortcoming is a lack of the public input that the rulemaking process was designed to foster. The short three-week comment period for the “public” and state EM directors and the establishment of the NRP/NIMS State and Local Working Group provide some opportunity for participation. It is encouraging that the August meeting was the first step in a series of gatherings to provide full consideration of the NRP and NIMS. Less positive was the failure of DHS to solicit partnership during the drafting phase of the documents by those who must live with them.

The NRP drafting process seems to spring in part from the assumption (embraced in some corners of Washington, DC) that the federal government knows best how to tackle local emergencies and disasters. While this way of thinking has always been an undercurrent in dealings with the federal government, the NRP and NIMS, as directed by HSPD 5, will ensure that it enjoys an unprecedented position of primacy over state and local governments and responders. Curiously, the NRP includes few, if any, truly innovative concepts for managing emergencies and disasters. Rather, as directed by President Bush in HSPD 5, it establishes greater power for the federal government, backed by certification and funding enforcement mechanisms, to impose evolved versions of current approaches upon state and local governments and their leaders. National responder regulation and the penalties for failure to comply with NIMS will not be subject to change by the NRP/NIMS State and Local Working Group.

The existing EM structure and regulatory systems for responders address the needs of the nation reasonably well. Clearly, there is room for improvement in the current approach, and the NRP and NIMS do embody enhancements, some of which are significant. The NRP/NIMS State and Local Working Group’s involvement will hopefully address a number of the concerns expressed in this paper. For anyone interested in the adoption of the NRP as a process, however, two questions linger:

Why has so much time, effort and funding been spent to repackage these evolutionary developments?

Should the process for writing and adopting these standards, beginning with the drafting stage, have included all the stakeholder communities?

The NRP and NIMS may eventually result in greater life safety and increased protection of property, but the question remains: Are they the wisest way to carry out the mandates of HSPD 5?

William C. Nicholson, JD is an expert in homeland security and emergency law. He services as an adjunct professor at Widener University School of Law, where he conceived and instructs a course entitled “Terrorism and Emergency Law.” His book Emergency Response and Emergency Management Law has been published by Charles C. Thomas Publisher, Ltd.

REFERENCES
3. NIMS at 4 (July 18, 2003 version).
5. Telephone interview with Albert Ashwood, director, Oklahoma Department of Emergency Management, NEMA Representative at the Forum meeting, August 22, 2003.