

# CRS Report for Congress

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## First Responder Resources: The Homeland Defense Equipment Reuse Program — Description and Issues

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### Summary

There has been general support for providing additional equipment to state and local first responders to help them deal with potential terrorist attacks. The Homeland Defense Equipment Reuse (HDER) Program is a small program operated jointly by the Department of Energy (DOE) and the Office for Domestic Preparedness (ODP) of the Department of Homeland Security (DHS). HDER gives first responders identified by ODP excess radiological detection and related equipment obtained mainly from DOE sites and the Navy.<sup>1</sup> It was established in 2002 as a pilot project for large metropolitan areas to determine if there was sufficient supply and demand. Based on their experience, DOE and DHS decided to continue HDER as a program for first responders nationwide beginning June 1, 2003. A likely future issue is the appropriate size and role of such a program. Should Congress expand it to foreign recipients, permit it to accept excess equipment from nongovernmental sources, or specify the types of equipment it should provide? This report will be updated as appropriate.

### Description

States and communities are expressing, with increasing urgency, concern that they need more resources to prepare for terrorist attacks. In their view, the threat is increasing, their resources are shrinking, and the federal government is imposing requirements on

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<sup>1</sup> See U. S. Department of Homeland Security. Office for Domestic Preparedness. "Homeland Defense Equipment Reuse Program (HDER) Program Fact Sheet," June 2003, [<http://www.ojp.usdoj.gov/odp/docs/HDERFactSheet0603.pdf>], and "Homeland Defense Equipment Reuse ... Program Bulletins," [<http://www.ojp.usdoj.gov/odp/docs/hderbulletins.htm>]; and U.S. Department of Energy. Assets Utilization Program. "Homeland Defense Equipment Reuse Program," [[http://epic.er.doe.gov/epic/pdfs/HDERP\\_Factsheet.pdf](http://epic.er.doe.gov/epic/pdfs/HDERP_Factsheet.pdf)]. For other programs that assist first responders, see CRS Report RL32348, *Selected Federal Homeland Security Assistance Programs: A Summary*, by (name redacted)

them while not providing sufficient resources to meet these requirements. Many Members of Congress, and President Bush, have echoed their concern.

HDER is a small program that meets some needs for equipment by first responders. It was established by an interagency agreement, effective June 5, 2002, between ODP (at the time part of the Department of Justice) and the Office of Assets Utilization National Center of Excellence for Materials Recycle (AU-NMR) of DOE's Oak Ridge (TN) Operations Office.<sup>2</sup> (ODP moved from Justice to DHS on March 1, 2003.) It is operated jointly by ODP, which links to the user community and training, and AU-NMR, which links to equipment providers. It was operated as a pilot program until March 31, 2003, followed by a two-month period to complete orders taken under the pilot program. HDER began as a national program — with equipment available to all states, territories, and the District of Columbia — on June 1, 2003.

The program obtains excess equipment for radiation monitoring, laboratory analysis, personal safety, and facility security from DOE sites and, to a lesser extent, from other federal agencies. The equipment, typically older but serviceable, became excess in several ways: some was replaced by newer equipment, some was no longer needed when DOE nuclear weapons production sites or facilities shut down because of the smaller post-Cold War workload; and some that was purchased to decontaminate a specific facility became excess when that task ended. One source of equipment was DOE's Brookhaven (NY) National Laboratory, which operated a Graphite Research Reactor from 1950 to 1968. Decommissioning, still underway as of December 2003, began in 2000; as it proceeded, some Geiger counters and other radiation detection equipment were no longer needed and were provided to HDER. Another source was the Environmental Protection Agency's Environmental Radiation Laboratory in Montgomery, AL, which provided HDER with several dozen instruments. A third source is the Navy, which in August 2003 agreed to provide radiation detectors that it is replacing with newer models. The units, some new in the box, have a retail value of about \$1,400 apiece. The Navy delivered 1,950 units to AU-NMR from Yorktown and San Diego in September 2003; AU-NMR expects the Navy ultimately to provide over 7,000 of these units. The potential exists for the Navy to provide large quantities of additional equipment to HDER.

Equipment available through HDER includes:

*Radiation monitoring:* Geiger counters, hand-held dose rate meters, count rate meters for contamination surveys, field gas monitoring systems;

*Laboratory equipment:* Benchtop laboratory analytical equipment, gloveboxes (airtight boxes with rubber gloves sealed onto ports to permit work with hazardous materials);

*Personal safety:* Gas masks, pocket dosimeters (for measuring the radiation dose an individual receives), and respirators; and

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<sup>2</sup> Interagency Agreement Between the U.S. Department of Justice, Office of Justice Programs, Office for Domestic Preparedness, and the U.S. Department of Energy, Oak Ridge Operations, Assets Utilization Office, National Center of Excellence for Materials Recycle, June 5, 2002.

*Facility security:* Metal detectors, cameras, law enforcement equipment, x-ray machines.

AU-NMR tests each piece to determine whether it is usable, makes repairs as needed, and inventories acceptable pieces. ODP lists its inventory at the beginning of each calendar quarter on a secure internet site available to each state's point of contact. ODP authorizes the distribution of equipment mainly on a first-come, first-served basis, but works with requesters to make sure that requests are consistent with their needs. AU-NMR then ships the equipment to first responders. Paperwork is minimal: jurisdictions need only complete a property transfer form to receive equipment; all other transfer information is electronic. ODP provides training for recipients in cooperation with the U.S. Army's Pine Bluff Arsenal.<sup>3</sup>

For FY2002, ODP awarded a grant of \$40,000 to the Health Physics Society (HPS), a professional organization focusing on radiation safety. HPS members support HDER at the local level by maintaining and calibrating equipment, providing refresher training for first responders in the use of equipment, and responding to questions from users.<sup>4</sup> HPS established this partnership with ODP because its members had expertise in this area and wanted to offer their services on behalf of preparedness against terrorism. HPS members provide services on a voluntary basis; the funds are for equipment-related and incidental expenses.

As a pilot program, HDER focused on providing instruments to the ten largest U.S. metropolitan areas. (Recipients included suburbs, transit systems, etc., as well as the major cities.) By May 31, 2003, it had distributed all equipment ordered — 1,601 pieces — to the Boston, Detroit, Los Angeles, New York, Philadelphia, San Francisco, Washington, Chicago, Dallas, and Houston metro areas. Program managers placed the value of this equipment at \$929,651. Training requested by the recipients for using the equipment was completed by the end of 2003. The cost of the pilot program was minimal. AU-NMR spent \$72,800 of its own funds by March 31, 2003, to receive the units and ensure that they were operable. ODP provided \$60,000 to AU-NMR, of which the latter had spent \$21,790 through May 31, 2003, to handle and ship the units. Also as of that date, HPS had spent \$5,500 of the \$40,000 grant.

As a national program, HDER transferred 4,291 units between June 1 and December 15, 2003, with an estimated value of \$1.13 million. The equipment went to ten states and

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<sup>3</sup> U.S. Department of Justice. Office of Justice Programs. Office for Domestic Preparedness. "Homeland Defense Equipment Reuse Program (HDER): Program Fact Sheet," October 2002, 2 p. This source states, "Training on the use of the equipment will be available ... through ODP's Domestic Preparedness Equipment Technical Assistance Program (DPETAP). DPETAP is a comprehensive, national equipment technical assistance program for emergency responders conducted in partnership with the U.S. Army's Pine Bluff Arsenal. DPETAP's mobile teams provide on-site equipment operation and maintenance training, as well as detailed technical information on domestic preparedness equipment." (p. 1) For further information on DPETAP, see U.S. Department of Justice. Office of Justice Programs. Office for State and Local Domestic Preparedness Support. "Domestic Preparedness Equipment Technical Assistance Program (DPETAP)." c. 2002. [<http://www.ojp.usdoj.gov/odp/docs/dpetap.htm>]

<sup>4</sup> Health Physics Society, "HPS Support to HDER Program Pilot Project," June 21, 2002, 3 p. Available at [<http://www.hps.org/documents/hderfactsheet.pdf>]

one territory. (This is in addition to equipment transferred under the pilot program.) ODP allocated \$510,390 for FY2003 to HDER, of which it provided \$328,300 to AU-NMR and \$182,090 to HPS. From the start of the pilot program, AU-NMR has spent some \$42,000 of ODP funds on HDER as of September 30, 2003. AU-NMR funds are to be available until expended; HPS funds are to be available for 24 months. AU-NMR funds derive from the Defense Environmental Restoration and Waste Management account; FY2003 ODP funds come from that organization's technical assistance budget.

Like ODP, AU-NMR maintains that the program is economical. DOE had several choices for the disposition of excess or obsolete equipment — disposal, sale, or reuse. Disposal would have cost about \$40 a unit because much of the equipment contains radioactive material or other hazardous waste, such as lead, silver, and mercury, that would have to be disposed of in specified ways. (At that rate, disposing of the 1,601 units distributed would have cost some \$64,000.) The cost of administering sales to the public through auction would, DOE estimates, have exceeded the proceeds.

In a similar program, AU-NMR distributed 28 instruments internationally through the International Atomic Energy Agency (IAEA) “for use in responding to industrial accidents as well as terrorist threats.”<sup>5</sup> Specifically, AU-NMR provided instruments to IAEA at the request of the State Department to help locate abandoned radioactive sources in the Republic of Georgia. In another program related to HDER, ODP provided radiation detection instruments to the U.S. Public Health Service's Noble Hospital Training Center at Ft. McClellan, in Anniston, AL, to assist in training hospital personnel to deal with casualties from weapons of mass destruction.<sup>6</sup>

## Issues for Congress

**Should the program be halted, kept at a low level, or expanded?** Once DOE has distributed excess equipment currently at DOE sites, there might not be enough additional equipment available to support continued HDER activity. Alternatively, a small but continuing flow of equipment may become obsolete or unneeded. In that case, maintaining HDER at a low level might be possible. Finally, non-DOE sources, such as other government agencies and corporations, have excess equipment. For example, the Navy's nuclear program discussed providing HDER some 7,000 instruments it plans to replace, and MGP Instruments Corporation offered to provide old instruments, such as for radiation monitoring, being returned for replacement by its nuclear power industry customers. If HDER were to become able to accept this equipment, an issue discussed below, the program might be expanded.

**Should HDER provide equipment to foreign requesters?** Given the terrorist threat and the resources currently available to first responders, HDER equipment is available only to domestic users. Congress might elect to use HDER to provide equipment to foreign nations as well, on grounds that the shortage of equipment abroad, especially in less developed countries, is more severe than in the United States, and that supporting foreign efforts to respond to terrorist threats, such as by securing radioactive

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<sup>5</sup> “DOE, “Homeland Defense Equipment Reuse Program.”

<sup>6</sup> For information on the center, see ODP Fact Sheet, “Center for Domestic Preparedness in Anniston, Alabama,” [<http://www.ojp.usdoj.gov/odp/docs/fs-cdp.htm>].

materials, could reduce the risk of a terrorist attack on the United States and its allies. At the same time, it may well prove desirable to reserve most equipment for U.S. users. To satisfy both goals, equipment might be made available overseas only (1) on an urgent, ad hoc basis at the request of a U.S. government agency, as in the case of the Republic of Georgia discussed above, or (2) if the pieces are unlikely to be used at home because more recent equipment for a given task is available or because the program has large stocks of a particular item.

**How should the program handle equipment donated by organizations outside the federal government?** Corporations, universities, hospitals, and other organizations have excess equipment that could be of use to first responders. Some have already offered equipment to HDER. Such donations would benefit corporations by saving them the expense of disposal and perhaps providing tax deductions. The program, however, is unable to accept such equipment based on an interpretation of federal appropriations law. According to the General Accounting Office,

While gifts to the United States do not require statutory authority, gifts to an individual federal agency stand on a different footing. The rule is that a government agency may not accept for its own use (i.e., for retention by the agency or credit to its own appropriations) gifts of money or other property in the absence of specific statutory authority.<sup>7</sup>

While the equipment received by HDER is transferred to non-federal agencies and so is not intended “for retention by the agency or credit to its own appropriation,” the Office of the Chief Counsel of DOE’s Oak Ridge Operations Office interprets the language cited above to apply on grounds that (1) DOE does not have statutory authority to accept gifts and (2) DOE, by using its own funds to check out the instruments, converts the instruments to its own use.

Because it cannot accept such equipment, HDER has a link with the Health Physics Society (HPS) whereby HPS accepts and checks out equipment from non-federal sources and distributes it to first responders. (As noted, HPS partnered with HDER to support preparedness efforts; it accepts non-federal equipment as an augmentation of, not the reason for, the partnership.) This approach complies with the foregoing interpretation of law. On the other hand, HDER program officers argue that HDER’s inability to accept donations of instruments from non-federal sources reduces the effectiveness of the program: if AU-NMR could accept all offerings, then ODP could select from a larger inventory, and wider variety, of equipment to meet first responders’ needs. Options include maintaining the current arrangement with HPS, granting DOE explicit statutory authority to accept gifts of this sort, or asking for additional analysis of DOE’s current statutory limitations.

**Should HDER attempt to fill gaps in its coverage?** A supply-driven program can only provide equipment made available to it. HDER increases the utility of this equipment by assembling individual pieces into kits and by using ODP’s expertise

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<sup>7</sup> U.S. General Accounting Office. Office of the General Counsel. *Principles of Federal Appropriations Law*, second edition, volume II, chapter 6, section E(3), p. 6-141, GAO/OGC-92-13, available at [<http://www.cfo.doe.gov/budget/gao>].

to help match equipment to needs of the requester.<sup>8</sup> On the other hand, HDER is not intended to provide a comprehensive suite of equipment for nuclear or radiological incidents. If such a goal proved desirable, there would be several options. HDER could seek donations from other government agencies or, if permissible, from other organizations, of equipment needed to complement what it already has, perhaps becoming a national clearinghouse for excess WMD preparedness and response equipment for first responders. If provided the funds, it could purchase such equipment in bulk to complement items in its inventory, as distinct from ODP's Equipment Grant Program, which provides funds directly to states and localities.<sup>9</sup>

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<sup>8</sup> HDER offers three radiological instrument kits: one "for the non-technical user performing screening activities," another "for emergency responders controlling the scene of a radiological incident," and a third "for the health physics practitioner to assist in consequence management." U.S. Department of Energy. Oak Ridge Operations Office. Office of Assets Utilization. Homeland Defense Equipment Reuse Program. "General Facility and Personal Security Items: Enhancing Readiness." 1 p., c. 2002. Available at [[http://www.oakridge.doe.gov/media\\_releases/2002/HDERPEnhancingReadiness.pdf](http://www.oakridge.doe.gov/media_releases/2002/HDERPEnhancingReadiness.pdf)].

<sup>9</sup> See U.S. Department of Homeland Security. Office for Domestic Preparedness. "Equipment Acquisition Grants." Last updated August 12, 2003, [<http://www.ojp.usdoj.gov/odp/grants/goals.htm>].

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