

# CRS Report for Congress

## The National Response Framework: Overview and Possible Issues for Congress

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## Summary

In response to the terrorist attacks of September 11, 2001, Congress and the President moved to consolidate numerous federal emergency plans into a single, unified national response plan. The end product of these efforts was the *National Response Plan* (NRP), which established broad lines of authority for agencies responding to emergencies and major disasters.

Perceived problems with the implementation of the NRP during Hurricane Katrina led Congress to enact the Post-Katrina Management Reform Act (P.L. 109-295) to integrate preparedness and response authorities. The legislation directed DHS to issue a successor plan to the NRP entitled the *National Response Framework* (NRF). Implemented in March 2008, the NRF establishes a new approach to coordinating federal and nonfederal resources and entities. The Department of Homeland Security maintains that the NRF is an improvement over the NRP. Some, however, assert that the NRF is not an improvement because it does not fully address the problems and challenges associated with the NRP.

In the 110<sup>th</sup> Congress, Members of Congress focused, in part, on policy options that addressed issues concerning the NRF as well as attempts to coordinate federal, state, and local preparedness and response efforts more fully. Some examples of federal laws enacted in the 110<sup>th</sup> Congress that have affected the NRF include Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53), and the National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181).

Some selected pending legislation introduced in the 110<sup>th</sup> Congress that may affect the NRF includes H.R. 1333, H.R. 2830, H.R. 3237, H.R. 6147, S. 4, S. 1427, S. 2214, S. 3260, and S. 2445.

This report discusses how national response planning documents have evolved over time and describes the authorities that shape the NRF. Several issue areas that might be examined for potential lawmaking and oversight concerning the NRF are also highlighted.

This report will be updated as significant legislative or administrative changes occur.

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# The National Response Framework: Overview and Possible Issues for Congress

In recent years, Congress and the President have devoted considerable attention to how the nation can best prevent, prepare for, respond to, and recover from natural and human-caused disasters. Events such as the terrorist attacks of September 11, 2001, and Hurricane Katrina of August 2005, have prompted Congress and the President to require the development of a plan for how government at all levels, and also the nongovernmental sector, should respond to all types of emergencies and disasters. Pursuant to statutory requirements and presidential directives, the Federal Emergency Management Agency (FEMA), an agency located within the Department of Homeland Security (DHS), issued such a plan in March 2008 with publication of the *National Response Framework* (NRF).<sup>1</sup>

The NRF is the end product of a long history. Prior to the terrorist attacks of September 11, 2001, the structure for responding to emergencies and disasters resided in at least 5 separate plans.<sup>2</sup> With the Homeland Security Act of 2002 (P.L. 107-296) and Sections 15 and 16 of the Homeland Security Presidential Directive 5 (hereafter HSPD-5), Congress and the President directed DHS to consolidate these plans into a single, integrated, and coordinated national response plan, and to develop a national incident management system (NIMS).<sup>3</sup> These efforts culminated in the initial *National Response Plan* (NRP) on October 10, 2003, followed by the release of NIMS on March 1, 2004.

In August 2005, Hurricane Katrina made landfall, followed shortly by Hurricanes Rita and Wilma. A number of studies on the responses to these hurricanes found shortcomings in the NRP itself and its implementation.<sup>4</sup> DHS made

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<sup>1</sup> U.S. Department of Homeland Security, Federal Emergency Management Agency, *National Response Framework* (Washington: January 2008), [<http://www.fema.gov/pdf/emergency/nrf/nrf-core.pdf>].

<sup>2</sup> These were the Federal Response Plan (which provided an overall plan for federal response since 1992), Conplan, Radiological Plan, National Contingency Plan, and Distant Shores. For background see also CRS Report RS21697, *Overview of Components of the National Response Plan and Selected Issues*, by Elizabeth Bazan, Keith Bea, William Krouse, Mark Holt, Mark Reisch, and Karma Ester, available from CRS.

<sup>3</sup> NIMS is a preparedness and response model that uses standardized terminology, communication systems, and organizational structures for a unified response. NIMS was created to integrate effective practices in emergency preparedness and response into a national framework for incident management.

<sup>4</sup> These include U.S. Congress, Senate Committee on Homeland Security and Governmental (continued...)

the decision to revise the NRP partially based on these reports. The revision of the NRP was also due to mandates in the Post-Katrina Emergency Management Reform Act of 2006 (P.L. 109-295, hereafter the Post-Katrina Act). In January 2008, DHS issued the NRF, which took effect in March 2008. Since that time, the NRF has been the nation's core response document, providing a structure for the response to such disasters as the 2008 Midwest floods and California wildfires, as well as Hurricanes Gustav and Ike.

This report reviews selected statutory provisions related to the NRF and provides an overview of the document. It discusses some of the reasons the Bush Administration revised the NRP, as well as some controversial aspects of the review process. The report also summarizes selected pending legislation concerning national response planning and concludes with a discussion of issues over which Congress might consider exercising oversight.

## Authorities Establishing and Influencing the NRF

Authority for the creation of the NRF emanates from numerous sources. FEMA has described the NRF as being guided by 15 “principal emergency authorities,” 48 other statutory authorities and regulations, 17 executive orders, and 20 presidential directives.<sup>5</sup> This report does not offer an exhaustive overview of these authorities. Rather, this section discusses some of the major authorities establishing the NRF, legislation that shaped the NRF's development, and legislation tied to congressional oversight.

**Pre-Hurricane Katrina.** The Robert T. Stafford Disaster Relief and Emergency Assistance Act (hereafter the Stafford Act) establishes the programs and processes by which the federal government provides emergency and major disaster assistance to states and localities, individuals, and qualified private nonprofit organizations. Section 611 of the Stafford Act authorizes the Director of FEMA<sup>6</sup> to prepare federal response plans and programs and to coordinate these plans with state efforts.<sup>7</sup> Consistent with this authorization, FEMA released the *Federal Response Plan* in April 1992. The primary purpose of the *Federal Response Plan* was to

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<sup>4</sup> (...continued)

Affairs, *Hurricane Katrina: A Nation Still Unprepared*, 109<sup>th</sup> Cong., 2<sup>nd</sup> sess., S.Rept. 109-322 (Washington: GPO, 2006); U.S. Congress, House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *A Failure of Initiative: Final Report of the House Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina*, 109<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 109-377 (Washington: GPO, 2006), and the White House Homeland Security Council, *The Federal Response to Hurricane Katrina: Lessons Learned* (Washington: February 23, 2006).

<sup>5</sup> U.S. Department of Homeland Security, Federal Emergency Management Agency, *National Response Framework: List of Authorities and References*, January 2008, pp. 1-16, [<http://www.fema.gov/pdf/emergency/nrf/nrf-authorities.pdf>].

<sup>6</sup> Section 612(c) of the Post-Katrina Act renamed the position of Director to Administrator.

<sup>7</sup> 42 U.S.C. 5196(b).

maximize the availability of federal resources to support response and recovery efforts taken by state and local emergency officials.

After the terrorist attacks of September 11, Congress passed the Homeland Security Act of 2002 (P.L. 107-296). Subsection 502(6) required the consolidation of “existing federal government emergency response plans into a single, coordinated national response plan.”<sup>8</sup> The Homeland Security Act also created DHS, consolidating over 20 agencies, including FEMA, into a single department. Under DHS, FEMA retained both its authority to administer the provisions of the Stafford Act and its designation as the lead agency for the nation’s response plan.

On February 28, 2003, President Bush issued HSPD-5. Section 16 of HSPD-5 directed the Secretary to develop and submit for review to the Homeland Security Council a national response plan. Section 16 also mandated that the plan use an “all-discipline” and “all-hazards” approach in preparing for, responding to, and recovering from domestic incidents.<sup>9</sup> In December 2004, through the primary guidance and authorization of the Stafford Act, the Homeland Security Act, and HSPD-5, DHS issued a successor to the *Federal Response Plan*, which was entitled the *National Response Plan* (NRP).<sup>10</sup>

**Post-Hurricane Katrina.** The NRP was in place and implemented for the Hurricane Katrina response in August 2005. The problems that arose from Hurricane Katrina prompted numerous studies. Some of these studies attributed the poor response, in part, to the implementation of the NRP. Concerned by perceived deficiencies in the NRP, Congress sought a remedy through legislation in the Post-Katrina Act. The Post-Katrina Act provides the most comprehensive legislation concerning the NRP (or any subsequent plans) by mandating numerous adjustments to the NRP as well as mechanisms for oversight. Section 642 amended the Stafford Act and the Homeland Security Act to mandate that the President develop a national preparedness system.<sup>11</sup> Section 643 further establishes that the President shall, through the Administrator of FEMA “complete, revise, and update, as necessary, a national preparedness goal... to ensure the Nation’s ability to prevent, respond to, recover from, and mitigate against natural disasters, acts of terrorism, and other man-made disasters.”<sup>12</sup> It further states that the national preparedness goal, to the extent possible, should be consistent with NIMS and the NRP.

Section 649(b) of the Post-Katrina Act requires that the national preparedness goal, NIMS, and the NRP be subjected to clear and quantifiable performance

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<sup>8</sup> 6 U.S.C. 312.

<sup>9</sup> U.S. President (G.W. Bush) Homeland Security Presidential Directive 5, sect. 16.

<sup>10</sup> U.S. Department of Homeland Security, *National Response Plan* (Washington: December 2004), [<http://www.scd.state.hi.us/documents/nrp.pdf>].

<sup>11</sup> 6 U.S.C. 742, 120 Stat. 1425.

<sup>12</sup> 6 U.S.C. 743, 120 Stat. 1425.

measures to ensure they are continuously revised and updated.<sup>13</sup> Section 652 of the act establishes annual reporting requirements concerning preparedness capabilities.<sup>14</sup> Section 652(c) requires the reporting of state compliance with the NRP.<sup>15</sup> Finally, Section 653 requires the president to ensure that federal agencies assigned with responsibilities in the NRP have the capability to meet the national preparedness goal, and develop plans to “respond effectively to natural disasters, acts of terrorism, and other man-made disasters in support of the National Response Plan to ensure a coordinated federal response.”<sup>16</sup>

In response to the Post-Katrina legislation and perceived problems with the implementation of the NRP, DHS revised the plan and issued the NRF. The following section describes the various components of the document.

## Overview of the NRF

**General Approach.** The NRF is part of a national strategy for homeland security. It provides the doctrine and guiding principles for a unified response from all levels of government, and all sectors of communities, to all types of hazards regardless of their origin.<sup>17</sup> Although the primary focus of the NRF is on response and short-term recovery, the document also defines the roles and responsibilities of the various actors involved in all phases of emergency management.<sup>18</sup>

The NRF is not an operational plan that dictates a step-by-step process for responding to hazards. Rather, the NRF appears to be an attempt to build flexibility into response efforts by setting up a framework that DHS believes is necessary for responding to hazards. Within this framework, the NRF gives users a degree of discretion as to how they choose to respond to the incident.

**Components of the NRF Document.** The NRF is organized into five parts. The introductory chapter presents an overview of the entire document and explains the evolution of the NRF, and identifies the various actors involved in emergency and disaster response. The chapter also discusses the concepts undergirding emergency

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<sup>13</sup> 6 U.S.C. 749, 120 Stat. 1428.

<sup>14</sup> 6 U.S.C. 749, 120 Stat. 1429.

<sup>15</sup> 6 U.S.C. 752, 120 Stat. 1430.

<sup>16</sup> 6 U.S.C. 753. Sec. 653(a)(4), 120 Stat. 1431.

<sup>17</sup> U.S. Department of Homeland Security, “National Response Framework Released,” press release, January 22, 2008, [[http://www.dhs.gov/xnews/releases/pr\\_1201030569827.shtm](http://www.dhs.gov/xnews/releases/pr_1201030569827.shtm)].

<sup>18</sup> These phases are mitigation, prevention, response, and recovery.

preparedness and response by providing a list of what DHS describes as the “five key principles” of response doctrine.<sup>19</sup>

The first chapter of the NRF, entitled “Roles and Responsibilities,” provides an overview of the roles and responsibilities of federal, state, and local governments, the nonprofit and private sectors, and individuals and households. The first chapter also discusses the roles and responsibilities of those who hold various positions within these entities.

The second chapter, entitled “Response Actions,” describes and outlines key tasks as they pertain to what DHS calls the “three phases of effective response.” These phases include “prepare,” “respond,” and “recover.” Preparing includes planning, organizing, equipping, training, exercising, and conducting evaluations. Activities related to responding include gaining and maintaining situational awareness,<sup>20</sup> activating and deploying resources and capabilities, coordinating response actions, and demobilizing. “Recover” activities are broken down into two broad categories. These are short-term and long-term recovery.

The third chapter of the NRF, entitled “Response Organization,” discusses the organizational structure and staffing used to implement response actions, all of which are based on NIMS and ICS.<sup>21</sup> The NRF describes the organization and staffing structure of every entity responsible for preparedness and response in detail.

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<sup>19</sup> These are:

- (1) Engaged Partnership: the NRF advocates for open lines of communication among various emergency management entities and for support partnerships during preparedness activities so that when incidents take place, these various entities are able to work together.
- (2) Tiered Response: responses to incidents begin at the local level. When local capacity is overwhelmed, state authorities assist the locality. Likewise, should the state be overwhelmed, assistance from the federal government is requested.
- (3) Scalable, Flexible, and Adaptable Operational Capabilities: as incidents change in size, scope, and complexity, there needs to be a corresponding change in the response apparatus.
- (4) Unity of Effort Through Unified Command: a clear understanding of the roles and responsibilities of each entity is necessary for effective response. Moreover, effective response requires a unit of effort within the emergency management chain of command.
- (5) Readiness to Act: all emergency management agencies, to the extent possible should anticipate incidents and make preparations to respond swiftly to them.

<sup>20</sup> “Situational awareness” refers to monitoring information regarding actual and developing incidents.

<sup>21</sup> ICS establishes a management system that helps agencies responding to an incident work together in a coordinated and systematic approach.



The fourth chapter, entitled “Planning,” describes the process of planning as it pertains to national preparedness and summarizes planning structures relative to the NRF. The chapter describes the criteria for successful planning and offers example scenarios for planning.

The fifth and final chapter of the NRF, entitled “Additional Resources,” describes the 15 Emergency Support Function (ESF) Annexes to the NRF, eight Support Annexes, and seven Incident Annexes.<sup>22</sup> These annexes are listed in **Tables 1 and 2** of this report. The final chapter also explains that the NRF and its annexes are posted online through the *NRF Resource Center*, which allows for ongoing revisions to the document.<sup>23</sup>

**Reasons for Replacing the NRP.** As mentioned earlier in the report, several studies attributed the problematic response to Hurricane Katrina partly to the implementation of the NRP. Although the NRP was used for smaller emergencies and disasters prior to Hurricane Katrina, the hurricane marked the first time the NRP was used for a catastrophic incident. The section that follows discusses how some of the changes in the NRF have addressed these criticisms.

**Difficulty in Understanding the NRP.** The NRP was widely criticized as complicated and overly bureaucratic. Some said it was long and weighed down with technical language. Additionally, users of the NRP reported that the document failed to clarify roles and responsibilities and that the federal chain of command was confusing.<sup>24</sup> It was further pointed out that the name “National Response Plan” was a misnomer (and hence misleading) because it was not a true operational plan in the sense that it did not provide a step-by-step process for responding to an incident.

The NRF uses less technical language than the NRP, and attempts to make the roles and responsibilities more transparent. The NRF is also shorter. Whereas the NRP contained over 400 pages, the NRF is roughly 80 pages. Still, some have contested the clarity of the NRF. This will be discussed in greater detail later in the report.

**National Versus Federal Focus.** Despite efforts to make the NRP a nationwide response plan, the NRP was widely seen as not sufficiently national in its focus because it emphasized federal preparedness and response. Some have further

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<sup>22</sup> ESFs provide the structure for coordinating federal interagency support for responses involving multiple federal agencies. Support Annexes describe how federal, state, tribal, and local entities, as well as nongovernmental organizations (NGOs) and the private sector, coordinate and execute the common functional processes and administrative requirements for incident management. Incident Annexes are specific hazard scenarios that require specialized and specific response efforts.

<sup>23</sup> NRF Resource Center, [<http://www.fema.gov/emergency/nrf/#>].

<sup>24</sup> Thomas Birkland and Sarah Waterman “Is Federalism the Reason for Policy Failure in Hurricane Katrina?,” *Publius*, vol. 38, no. 4 (Fall, 2008), p. 706.

argued that the process of creating the plan excluded nonfederal stakeholders, such as states and localities.<sup>25</sup>

According to DHS, the NRF more clearly articulates the roles and responsibilities of nonfederal entities.<sup>26</sup> Additionally, when drafting the NRF, DHS held outreach sessions to solicit the feedback of nonfederal partners.<sup>27</sup> The extent of nonfederal participation in the creation of the NRF has been questioned and is discussed later in this report.

***Confusion Concerning the FCO and the PFO.*** One frequent criticism of the NRP was the ambiguity surrounding the relationship and role of the Federal Coordinating Officer (FCO) and the Principle Federal Officer (PFO).

The FCO determines the types of relief most urgently needed, establishes field offices, and coordinates relief efforts.<sup>28</sup> The FCO position is authorized by the Stafford Act. Immediately upon declaring a major disaster, Section 302(a) of the Stafford Act requires the President to appoint an FCO.<sup>29</sup>

The PFO, on the other hand, is not a legislatively authorized position. Rather, the PFO position was created by DHS in the NRP. The PFO is designated by the Secretary of DHS and represents the Secretary as the leading federal official and serves as the primary point of contact for state and local officials. In Hurricane Katrina, Michael Brown, who was serving as the Director of FEMA, was additionally designated as the PFO. William Lokey served as the FCO for Louisiana. To some observers (such as the Inspector general for DHS), these roles created a great deal of confusion during Hurricane Katrina, because it appeared that two people were in charge of the relief operations.<sup>30</sup>

Congress focused on the confusion involving the PFO in the Consolidated Appropriations Act, 2008 (P.L. 110-181). Section 526 of the act states that “none of the funds provided by this or previous appropriations Acts shall be used to fund any position designated as a Principal Federal Official for any Robert T. Stafford Disaster Relief and Emergency Assistance Act declared disasters or emergencies.”

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<sup>25</sup> Based on a discussion with James Kish, Senior Director, Exercises and Evaluations, DHS February 2008.

<sup>26</sup> U.S. Department of Homeland Security, *National Response Framework* (Washington: January 2008), p. 2.

<sup>27</sup> Mickey McCarter, “FEMA Deputy Director Lauds National Response Framework,” *Homeland Security Today*, September 30, 2007, [<http://www.hstoday.us/content/view/205/128/>].

<sup>28</sup> U.S. Congress, Senate, *Hurricane Katrina: A Nation Still Unprepared*, special report of the Committee on Homeland Security and Governmental Affairs, 109<sup>th</sup> Cong., 2<sup>nd</sup> sess. (Washington: 2006), pp. 552-553.

<sup>29</sup> 42 U.S.C. 5143.

<sup>30</sup> U.S. Department of Homeland Security, Office of Inspector General, FEMA’s Preparedness for the Next Catastrophic Disaster, OIG/OIG-08-34, March 2008, p. 15, [[http://www.dhs.gov/xoig/assets/mgmttrpts/OIG\\_08-34\\_Mar08.pdf](http://www.dhs.gov/xoig/assets/mgmttrpts/OIG_08-34_Mar08.pdf)].

To date, the PFO and FCO arrangement remains in the NRF. However, FEMA has pointed out that since the implementation of the NRF, the PFO position has not been used. Some have indicated that the position may be in the process of being phased out.<sup>31</sup> However, DHS Secretary Chertoff designated PFOs before the start of the 2008 hurricane season. The move was viewed as controversial by some. House Transportation and Infrastructure Committee Chairman James Oberstar reportedly focused on the fact that Congress had effectively eliminated the position, and that designating PFOs violated the Consolidated Appropriations Act.<sup>32</sup> As previously pointed out, the PFO position has not been used since the NRF was implemented.

**Reports on Progress Made Since Hurricane Katrina.** Several emergencies and disasters have taken place since implementation of the NRF. In general, responses to the NRF have been mixed. Some have indicated that its implementation has been successful.<sup>33</sup> One observer stated that coordination among federal, state, and local governments has improved.<sup>34</sup> In the case of Hurricanes Gustav and Ike, officials in Texas related that the federal response to the hurricanes was good.<sup>35</sup> Other officials have been ambivalent regarding the NRF's implementation, noting that the scale of recent disasters has not warranted enough federal involvement to understand how well the NRF works.<sup>36</sup>

A review of various reports may hint at some problems, however. For instance, during Hurricanes Gustav and Ike, state officials in Texas said it was the local government's responsibility to set up distribution points for supplies. However, the local government claimed it was unaware of this responsibility.<sup>37</sup> Such confusion may indicate that the NRF still does not clearly articulate the roles and responsibilities of state and local governments during emergencies and disasters.

Other, more serious criticisms of the NRF have surfaced since its implementation. The following section discusses these in greater depth and highlights issues Congress might examine or policy options it might consider.

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<sup>31</sup> Based on a discussion with Glenn Cannon, Assistant Administrator, DHS/FEMA, August 2008.

<sup>32</sup> Mickey McCarter, "Lawmakers, Experts Rebuke Disaster Response 'Chokepoint'," *HS Today*, June 18, 2008, [<http://www.hstoday.us/content/view/3859/149/>].

<sup>33</sup> For example see, Daniel Fowler, "Effective Response to Gustav — Courting Complacency or Heralding a Habit?" *CQ Press*, September 3, 2008, [<http://homeland.cq.com/hs/displayalert.do?matchId=64477887>].

<sup>34</sup> Daniel Fowler, "Who's in Charge Still a Disaster-Response Question Mark," *CQ Homeland Security*, September 22, 2008.

<sup>35</sup> Daniel Fowler, "Federal Response to Recent Hurricanes Termed 'So Far, So Good'," *CQ Homeland Security*, September 23, 2008.

<sup>36</sup> Based on telephone conversations with emergency managers in Maine, New Mexico, Oregon, and North Dakota.

<sup>37</sup> Daniel Fowler, "Who's in Charge Still a Disaster-Response Question Mark," *CQ Press*, September 22, 2008.

## Potential Issues for Congress

**Lack of Operational Plans and Annex Updates.** There has been some concern over a lack of comprehensive, operational plans in the NRF. Homeland Security Presidential Directive 8 (hereafter HSPD-8) Annex 1, issued in December of 2003 by President George W. Bush, requires DHS to establish a standardized federal planning process that integrates plans among all levels of government. To date, this standardized planning process has not been released. The absence of a standardized planning process was discussed in Government Accountability Office (GAO) testimony on preparedness for catastrophic disasters.<sup>38</sup> In the testimony, GAO pointed out that two supplements to the NRF are not completed. These are *Federal Partner Response Guides* and the *Integrated Planning System*. The partner guides are intended to provide a ready reference of key roles and actions for federal, state, and local governments, as well as nongovernmental and private-sector response partners. The planning system is intended to assist all levels of government in working together collaboratively to create plans for various types of incidents.<sup>39</sup>

A similar concern over a lack of operational plans was voiced by Representative Bennie Thompson, Chairman of the House Committee on Homeland Security. In a letter to the Secretary of DHS, Representative Thompson expressed concern that the Incident Annexes lack operational plans that detail how the federal government will respond to natural and human-caused disasters.<sup>40</sup> The Catastrophic Incident, Cyber Incident, and Terrorism Incident Law Enforcement and Investigation Annexes have yet to be updated.<sup>41</sup> Some would argue that using these annexes, which were developed for the NRP, may create problems if they are invoked under the NRF. For example, the Catastrophic Incident Annex discusses how a catastrophic event may be designated as an Incident of National Significance (INS). An INS was intended as a triggering mechanism for certain types of response strategies. However, the INS term has been eliminated from the NRF's lexicon.

Some could argue that a lack of operational plans in the NRF may warrant congressional oversight. Should DHS fail to release the *Federal Partner Response Guides*, and the *Integrated Planning System*, or update the remaining Incident Annexes in a timely fashion, Congress might elect to consider the matter.

**Integrating Nonfederal Stakeholders in National Planning.** A criticism of the NRP was that input from nonfederal stakeholders, such as state and local governments, nonprofit groups, and the private sector, was poorly integrated

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<sup>38</sup> U.S. Government Accountability Office, *Observations on DHS's Preparedness for Catastrophic Disasters*, GAO/GAO-08-868T, June 11, 2008.

<sup>39</sup> *Ibid.*, pp. 11-12.

<sup>40</sup> Letter from Rep. Bennie Thompson, Chairman, U.S. House of Representatives, Committee on Homeland Security, to Michael Chertoff, Secretary of U.S. Department of Homeland Security, October 9, 2008.

<sup>41</sup> The Catastrophic Incident Annex was not updated when this report was released. Since then, a new Catastrophic Incident Annex has been issued. This report will be updated at a later date to reflect this change.

into the document. Congress addressed this issue in Section 653 of the Post-Katrina Act, where Congress required DHS and FEMA to develop operational plans with state, local, and tribal government officials.<sup>42</sup> According to a GAO report, DHS initially included nonfederal stakeholder input in the creation of the NRF, but later “deviated” from the process.<sup>43</sup> Rather than disseminating the first draft of the NRF to stakeholders, DHS conducted an internal review of the document. GAO found that the issuance of a later draft to nonfederal stakeholders was delayed, reducing the amount of time for the stakeholders to respond with comments on the draft. Additionally, GAO reported that DHS failed to establish FEMA’s National Advisory Council (NAC) by the December 2006 deadline that was set forth in Section 508 of the Post-Katrina Act. According to the act, the NAC is responsible for incorporating the input of state, local, and tribal governments and the private sector in the development and revision of the NRF.<sup>44</sup>

The importance of meeting the congressional mandate has been addressed by one analyst. Donald Kettl, a public policy professor at the University of Pennsylvania, has emphasized the importance of including local officials in the planning process. According to Kettl, “no amount of national planning can side-step the fact that ... the first indicator that something bad is happening is a report from the frontlines.”<sup>45</sup>

In consideration of these conclusions, some may argue that failing to integrate feedback from local emergency officials could (1) omit hazards that are known at the local level but not recognized by federal officials, (2) miss an opportunity to integrate the lessons learned from local responders who have first-hand experience with emergencies and disasters, and (3) fail to establish “buy-in” to the plan at the state and local level thereby creating a possible reluctance to execute the plan faithfully. If the issue of nonfederal stakeholder input were of concern to Congress, it might move to conduct oversight on the extent to which DHS and FEMA are utilizing the NAC and incorporating nonfederal stakeholders in all aspects of national emergency planning and revision.

**Children and Disasters.** In testimony before the House Homeland Security Subcommittee on Emergency Preparedness, Science and Technology, one emergency

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<sup>42</sup> 42 U.S.C. 753.

<sup>43</sup> U.S. Government Accountability Office, *National Response Framework: FEMA needs Policies and Procedures to Better Integrate Non-Federal Stakeholders in the Revision Process*, GAO-08-768, June 2008, p. 9.

<sup>44</sup> Richard Skinner, the Inspector General for DHS, made the same assertion, stating that FEMA’s NAC was not established in time to have meaningful input into the development of the NRF. See Testimony of the Inspector General for the Department of Homeland Security, in U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *The New FEMA: Is the Agency Better Prepared for a Catastrophe Now Than It Was in 2005?*, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., April 03, 2008, [[http://hsgac.senate.gov/public/\\_files/040308Skinner.pdf](http://hsgac.senate.gov/public/_files/040308Skinner.pdf)].

<sup>45</sup> Donald F. Kettl, “Katrina Plus Three,” *Governing.com*, August 2008. [<http://www.governing.com/articles/0808potomac.htm>].

professional<sup>46</sup> pointed out that there is a gap in the level of emergency readiness between adult and pediatric care.<sup>47</sup> He noted that children are more vulnerable to hazardous materials than adults, have unique treatment needs, and require care from providers who have been specifically trained to meet these needs. The witness stated, however, that federal, state, and local efforts in disaster planning have generally overlooked the unique needs of children.

Separately, Mark Shriver, Vice President and Managing Director of Save the Children's U.S. Programs, has stated that children are vulnerable during emergencies and evacuations. According to Shriver, the needs of children are commonly overlooked before, during, and after a disaster. Shelters, for example, often have unsanitary conditions, and many communities lack sufficient stockpiles of diapers, formula, pediatric medications, and child-size respirators.<sup>48</sup>

In various legislative provisions, Congress has focused on the needs of children during disasters. For example, the Post-Katrina Act contains a provision to reunite children with their families by establishing, within the National Center for Missing and Exploited Children, a new National Emergency Child Locator Center.<sup>49</sup> Congress addressed the subject again in the Consolidated Appropriations Act, 2008. Division G, Section 603 of the act establishes the National Commission on Children and Disasters. The purpose of the Commission is to conduct a comprehensive study to examine and assess the needs of children during disasters and submit a report to the President and Congress.<sup>50</sup>

Under the NRF, the needs of children are addressed in ESF #6 and #13.<sup>51</sup> The support of children's needs in ESF #6 is delegated to several nonprofit organizations, including Catholic Charities, Feed the Children, Save the Children, and the United Methodist Committee on Relief (UMCOR). One of the functions of ESF #13 is to protect children. Under the annex, the National Center for Missing and Exploited

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<sup>46</sup> Steven Krug is the Head of the Division of Pediatric Emergency Medicine at Children's Memorial Hospital in Chicago, Illinois, and a Professor of Pediatrics at the Northwestern University Feinberg School of Medicine.

<sup>47</sup> Testimony of Steven Krug, U.S. House Committee on Homeland Security, Subcommittee on Emergency Preparedness, Science and Technology, *Emergency Care Crisis: A Nation Unprepared for Public Health Disasters*, July 26, 2006, [[http://www.aap.org/sections/pem/er\\_readiness\\_testimonyfinal.pdf](http://www.aap.org/sections/pem/er_readiness_testimonyfinal.pdf)].

<sup>48</sup> Save the Children, *Keeping Texas Children Safe from Hurricane Ike*, September 11, 2008, [<http://www.savethechildren.org/newsroom/2008/texas-hurricane-ike.html>]. See also Editorial, "What About the Children? A National Commission Starts Work to Make Sure the Young Aren't Forgotten During Disasters," *Washington Post*, October 14, 2008, A16. [<http://www.washingtonpost.com/wp-dyn/content/article/2008/10/13/AR2008101302279.html>].

<sup>49</sup> Sec. 689(b)(1).

<sup>50</sup> P.L. 110-161, Sec. 604(1)(2)(3).

<sup>51</sup> ESF #6 is the Mass Care, Emergency Assistance, Housing, and Human Services Annex and ESF #13 is the Public Safety and Security Annex.

Children (NCMEC), a private sector organization, is responsible for preventing child abduction and sexual exploitation, and helping locate missing children.

Congress might consider how well the issue of child protection in disasters is addressed in the NRF's annexes. Several observations about the NRF's current coverage include the following. First, there are no primary agencies designated as responsible for addressing children's needs. Only supporting agencies have this designation. Second, some may argue that the annexes are flawed because the Public Health and Medical Services Annex (ESF #8) and Search and Rescue Annex (ESF #9) do not explicitly mention children in their various functions. Third, some may argue that having multiple annexes focused on the needs of children may create service gaps, and that when several organizations are assigned with responsibility, it becomes unclear what agency will take the lead, and what functions these agencies are carrying out. In addition, they may argue that having multiple organizations creates unnecessary duplication.

**The NRF as a Living Document.** Having the NRF available online appears to have some benefits. Emergencies and disasters are fluid events and having a document capable of adapting to the needs created by unique emergencies and disasters would seem to add to the NRF's flexibility. It also gives users easy access to the document. However, it is unclear what mechanisms are in place to ensure users know the document has been changed. Is it possible that a state or locality may use protocols that have been removed or revised?

The NRF is always in effect, whereas the NRP had to be invoked when an emergency or disaster struck. According to DHS, this has the benefit of speeding response time because it eliminates the need to wait for some form of announcement that the plan is in effect. Some may argue that a plan that is always in effect lacks a triggering mechanism to alert responders and create situational awareness. Does the NRF benefit response activities by always being in effect?

**Reporting Requirements and Metrics.** The Post-Katrina Act requires the Administrator of FEMA to submit to Congress annual reports that identify the resources needed to enhance regional offices and undertake planning, training, surge capacity, and logistics. Reporting must also include information about state compliance with the NRF and the extent to which the use of federal assistance during the preceding fiscal year achieved preparedness priorities.<sup>52</sup> Additionally, homeland security grants require broad state compliance with national preparedness policy.

Some may argue that emergency management practices are strengthened when states and localities adopt federal standards for emergency preparedness and response. Others may argue that mandating compliance has at least two negative consequences. First, not all states have the same set of hazards. A one-size-fits-all approach may not be the best method of addressing hazards, because states and localities are better positioned to make decisions about how to conduct emergency

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<sup>52</sup> P.L. 109-295, Sec. 652(a)(2)(A)-(D), 120 Stat. 1429, Sec. 652(c)(2)(A)-(C), 120 Stat. 1430.

planning and response.<sup>53</sup> Second, requiring compliance and creating standards increases federal involvement in emergency policy. Again, some may argue this is beneficial, because it can help save lives and reduce property loss, but others might argue that the requirements infringe on state sovereignty.

**Emphasis on Terrorism.** All of the NRF's Incident Annexes are oriented toward terrorism. Since Hurricane Katrina, some have argued that there has been an emphasis on planning for high-impact, low-probability incidents at the expense of low-impact, high-probability incidents. Additionally, it is possible that planning for terrorism underemphasizes preparedness for natural disasters. For example, in testimony before the House Natural Resources Committee, David Applegate pointed out that earthquakes are among the most expensive of natural disasters in terms of destruction. According to Applegate, this underscores the importance of preparedness and mitigation; however, there is no Incident Annex addressing earthquakes.<sup>54</sup>

The President of the International Association of Emergency Managers (IAEM) and Director of Emergency Management, Hillsborough County, Florida, also addressed the terrorism emphasis. Director Larry Gispert responded favorably to President-elect Obama's plan to support first-responders, prepare effective emergency response plans, improve interoperable communications systems, and work with state and local governments and the private sector, and allocate funds based on risk. Gispert objected to plans that focus on terrorism because state and local emergency managers primarily deal with natural disasters. According to Gispert, the plan would have the benefit of allowing state and local governments to prepare for both types of incidents rather than predominantly terrorism.<sup>55</sup>

On the other hand, others would argue that planning for terrorism is of the utmost importance and that a terrorist attack would have the same consequences as a natural disaster.<sup>56</sup> They may conclude that planning and preparedness for terrorism can be applied toward natural disasters and therefore fits the all-hazards model of emergency management.

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<sup>53</sup> Samuel Clovis, "Promises Unfulfilled: the Sub-Optimization of Homeland Security National Preparedness," *Homeland Security Affairs*, vol. 4, no. 3, October 2008. [<http://www.hsaj.org/pages/volume4/issue3/pdfs/4.3.3.pdf>].

<sup>54</sup> Testimony of Director of Government Affairs, U.S. Geological Survey U.S. Department of the Interior, David Applegate, in U.S. Congress, House Committee on Natural Resources Subcommittee on Energy and Mineral Resources, *The United States Geological Survey's Earthquake Hazards Program - Science, Preparation, and Response*, 110<sup>th</sup> Cong., 2<sup>nd</sup> sess., May 22, 2008, [[http://resourcescommittee.house.gov/images/Documents/20080522/testimony\\_applegate.pdf](http://resourcescommittee.house.gov/images/Documents/20080522/testimony_applegate.pdf)].

<sup>55</sup> Daniel Fowler, "Experts Like Obama's Preparedness Plans, Eager to See the Details," *CQ Press*, November 11, 2008.

<sup>56</sup> RAND National Defense Research Institute, *When It Comes to Terrorism, How Prepared Are Local and State Agencies?* RB-9209-OSD (2006), [[http://www.rand.org/pubs/research\\_briefs/2006/RAND\\_RB9209.pdf](http://www.rand.org/pubs/research_briefs/2006/RAND_RB9209.pdf)].



If Congress were concerned about the possibility that preparedness for natural disasters is being hampered by overemphasizing terrorism in emergency plans, or that resources for natural disaster preparedness are being diverted to prepare for terrorist events, Congress may elect to have FEMA develop natural disaster annexes, or incorporate more natural disaster planning in existing Incident Annexes.

## **Selected Enacted and Pending Legislation in the 110<sup>th</sup> Congress**

The 110<sup>th</sup> Congress enacted legislation addressing issues related to the NRF; other matters, however, have been left unresolved. The following section gives some examples of enacted legislation that affected the NRF. It also identifies legislation that Members of the 111<sup>th</sup> Congress may decide to reconsider.

**Selected Enacted Legislation.**<sup>57</sup> Several laws enacted in the 110<sup>th</sup> Congress have affected the NRF. P.L. 110-53, Implementing Recommendations of the 9/11 Commission Act of 2007, was signed into law August 3, 2007. Section 408 amends 510 of the Homeland Security Act of 2002 by requiring the Administrator of FEMA to create standards for credentialing and classifying<sup>58</sup> incident management personnel for federal, state, local, and tribal government agencies that have responsibilities under the NRF.

Section 510 of the Homeland Security Act, as amended, requires that no later than six months after receiving the standards, each federal agency with responsibilities under the NRF must ensure that incident management personnel, emergency response providers, and other personnel (including temporary personnel) as well as resources likely needed to respond to a disaster, be credentialed and typed in accordance with those standards.<sup>59</sup> Section 1407 of P.L. 110-53 requires that security exercises for public transportation agencies be consistent with the NRF.<sup>60</sup>

P.L. 110-181, the National Defense Authorization Act for Fiscal Year 2008, was signed into law January 28, 2008. Section 351(f) requires the National Guard to submit an annual report containing an assessment of the Guard's readiness to perform tasks that support civil authorities under the NRF. The act also requires that should the report reveal relevant information concerning a National Guard of a particular state, that information will be made available to the governor of that state.<sup>61</sup>

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<sup>57</sup> Based on a search on the CRS Legislative Information System (LIS) using the terms "National Response Plan" and "National Response Framework."

<sup>58</sup> The act uses the term typing rather than classifying.

<sup>59</sup> Sec. 408(c).

<sup>60</sup> Title XIV — Public Transportation Security, Sec. 1407(1)(F).

<sup>61</sup> Sec. 351(2).

**Pending Legislation.**<sup>62</sup> The following is a list of selected legislation pending at the end of the 110<sup>th</sup> Congress that, if acted upon in a later Congress, might have implications for the NRF.

S. 3260, the Financial Services and General Government Appropriations Act, 2009, was introduced July 14, 2008. Section 516 of the bill would have authorized the General Services Administration (GSA) to allow volunteer and other nongovernmental organizations supporting the NRF to have access to GSA sources of supply. The intent of the bill was to improve logistics in response efforts. Some may contend that the confusion during Hurricanes Gustav and Ike concerning distribution points for supplies may have been lessened through access to GSA supply schedules. S. 3260 was placed on the Senate Legislative Calendar under general orders. (Calendar No. 877).

H.R. 1333, the Civil Air Patrol Homeland Security Support Act of 2007, introduced in the House on March 6, 2007, would have directed the Secretary of DHS to enter into memoranda of understanding or other agreements with the Secretary of Defense to use Civil Air Patrol personnel and resources to support homeland security missions. The Secretary of DHS would have been authorized to consider the Civil Air Patrol an available resource for purposes of national preparedness and response planning activities, including the *National Response Plan* (meaning the NRF). H.R. 1333 passed the House and was referred to the Senate.

H.R. 6147, the Federal Emergency Management Advancement Act of 2008, was introduced May 22, 2008. The intent was to establish FEMA as an independent agency. If enacted, Section 104(6) would have required the Director of FEMA to consolidate existing federal government emergency response plans into a single, coordinated national response plan. H.R. 6147 was referred to the House Subcommittee on Emergency Communications, Preparedness, and Response June 2, 2008.

## Concluding Observations

In response to directives from Congress and the President, the Bush Administration issued the NRF to establish a new approach to coordinate federal and nonfederal entities in times of emergencies and major disasters. The NRF does appear to respond to some of the challenges identified by Congress and others. The document is more concise, has less jargon, and has made an attempt to clarify roles and responsibilities. On the other hand, parts of the NRF may have retained some of the problems associated with the NRP. The NRF still contains the PFO arrangement, nonfederal stakeholder input appears to be lacking, and the Incident Annexes have yet to be fully updated.

Some observers might say that not enough emergencies and disasters have occurred since the NRF has been issued to form a clear picture of its effectiveness. Also, they may contend that insufficient implementation studies have been conducted

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<sup>62</sup> Based on a search on the Legislative Information Service (LIS), using the terms “National Response Plan” and “National Response Framework.”

on the NRF to assess its efficacy. As some observers point out, the only way to find out whether the NRF is an improvement over the NRP may be to subject it to a major catastrophe comparable to Hurricane Katrina.

## Appendix. Annexes to the National Response Framework

**Table 1. List of ESF Annexes**

Emergency Support Function (ESF) Annexes	
ESF #1	Transportation
ESF #2	Communications
ESF #3	Public Works and Engineering
ESF #4	Firefighting
ESF #5	Emergency Management
ESF #6	Mass Care, Emergency Assistance, Housing, and Human Services
ESF #7	Logistics Management and Resource Support
ESF #8	Public Health and Medical Services
ESF #9	Search and Rescue
ESF #10	Oil and Hazardous Materials Response
ESF #11	Agriculture and Natural Resources
ESF #12	Energy
ESF #13	Public Safety and Security
ESF #14	Long-Term Community Recovery
ESF #15	External Affairs

**Table 2. Lists of Incident and Support Annexes**

<b>Incident Annexes</b>
Biological Incident
Catastrophic Incident
Cyber Incident
Food and Agriculture Incident
Mass Evacuation Incident
Nuclear/Radiological Incident
Terrorism Incident Law Enforcement and Investigation
<b>Support Annexes</b>
Critical Infrastructure and Key Resources
Financial Management
International Coordination
Private-Sector Coordination
Public Affairs
Tribal Relations
Volunteer and Donations Management
Worker Safety and Health