

MONDAY, OCTOBER 22, 2007

# **LIEBERMAN, COLLINS, LANDRIEU COMMENT ON NEW NATIONAL RESPONSE FRAMEWORK**

WASHINGTON – Homeland Security and Governmental Affairs Committee Chairman Joe Lieberman, ID-Conn, and Ranking Member Susan Collins R-Me., along with Chairman of the Ad Hoc Subcommittee on Disaster Recovery, Senator Mary Landrieu D-La., Monday responded to the proposed National Response Framework (NRF) being prepared by the Department of Homeland Security. In a letter to DHS Secretary Michael Chertoff, the lawmakers thanked the Department for working toward the Committee's recommendation to make the National Response Plan clearer and more accessible to users. But they also raised questions about whether DHS is properly implementing the Post-Katrina Emergency Management Act of 2006; the lack of a clear chain of command; and the process by which the NRF was developed. Additionally the Senators stressed that the NRF does not replace the need for proper operational plans.

Following is the letter:

October 22, 2007

The Honorable Michael Chertoff  
Secretary  
Department of Homeland Security  
Washington, DC 20528

Dear Secretary Chertoff:

As the Chairman and Ranking Member of the Senate Committee on Homeland Security and Governmental Affairs (Committee) and as the Chairman of the Ad Hoc Subcommittee on Disaster Recovery, we are writing to provide comments on the draft National Response Framework (NRF). We ask that our letter be treated as a response to the request for comments in FEMA Docket ID 2007-07 (72 Fed. Reg. 51833 (September 11, 2007)) and included as part of the public record in that matter. While we support the Department of Homeland Security's (Department or DHS) efforts to enumerate preparedness planning and guidelines, we would like to raise some concerns, and in some cases pose questions, about the draft NRF, especially as it relates to implementing key provisions in the "Post-Katrina Emergency Management Reform Act of 2006," the "Homeland Security Act of 2002," and other authorities. These comments are limited to the base framework itself and do not address the accompanying emergency support functions and annexes.

In investigating the failed response to Hurricane Katrina, the Committee found that the Department, and especially the Federal Emergency Management Agency (FEMA), was unprepared for a catastrophic event. In addition to a lack of basic capabilities and resources at FEMA, the Committee found key failures in other parts of the Department, such as its hesitant, inaccurate, and inconsistent implementation of the National Response Plan (NRP) and the lack of effective communication between the Secretary of Homeland Security and the then-Director of FEMA. The Committee recommended replacing FEMA with a new, stronger, more robust Federal response agency. In September 2006, Congress passed the Post-Katrina Emergency Management Reform Act of 2006 ("the Act"), which President Bush signed into law in October 2006.

The Act, which implemented many of the recommendations from the Committee's investigation, creates a new FEMA – with responsibilities, missions, capabilities, and resources far exceeding those of FEMA at the time of Hurricane Katrina – by vesting greater autonomy and elevating the status of FEMA and its leaders within the Department. Among other things, unlike its predecessor, the new FEMA is: (1) a distinct entity within DHS, with protections similar to those afforded the U.S. Coast Guard; (2) focused on all-hazards preparedness, protection, mitigation, response, and recovery; and (3) responsible for the entire cycle of emergency management, including the management of close to \$2 billion in grants to help State and local officials and first responders prepare for terrorist attacks and natural disasters.

In debating the Act, Congress decided to strengthen FEMA within the Department of Homeland Security in recognition of the fact that the kinds of catastrophic disasters the nation must prepare for requires resources far beyond what FEMA can effectively marshal standing alone. The Act's goal is to better enable FEMA to coordinate effectively the substantial response resources in other components within the Department, such as the Coast Guard, as well as to enable FEMA to be more effective in coordinating the response assets of the rest of the Federal government. However, even though FEMA by most accounts has made important progress since Hurricane Katrina, the draft NRF raises several important questions about whether the Act is being properly implemented.

Framework no substitute for operational plans:

Effective planning for disasters – both large and small – is essential. Indeed, planning experts consider the process of making and updating such plans to be as important as (if not more than) the final product. Planning for a national response is particularly difficult, given the significant challenges in coordinating the responses of Federal, State, and local governments, the private sector, and nongovernmental entities. In the final analysis, an effective response requires well-exercised plans that clearly enumerate roles and responsibilities at all levels of government. Unfortunately, we are not convinced that the draft NRF meets this requirement.

In the aftermath of Hurricane Katrina, the Committee identified several problems with the NRP and its execution, including ambiguities in areas such as the roles and responsibilities of response participants. For example, the Committee found that the roles and responsibilities of the Principal Federal Official (PFO) and the Federal Coordinating Officer (FCO) overlapped and caused considerable confusion. As a consequence, the Committee's report recommended that the Department revise the NRP to make it clearer and more accessible to users. The draft NRF is in many respects more streamlined than the NRP, uses far less jargon and fewer acronyms, and is an overall more user friendly document. We are pleased that the Department worked towards meeting this recommendation.

We understand and appreciate the fact that DHS's intention with the draft NRF was explicitly not to create a plan, but instead to create a document addressed to senior elected and appointed leaders and to "inform" emergency management practitioners. The inadequate response to Hurricane Katrina clearly demonstrated the importance of educating elected officials at all levels about disaster response. However, over six years since the terrorist attacks of September 11 and over two years since Hurricane Katrina, we still do not have sufficient operational plans for governing the response to disasters. As

Hurricane Katrina demonstrated, operational plans, properly exercised, are needed to support the NRP. The continuing lack of such plans is a serious gap in our homeland security. The draft NRF emphasizes how far away we are from accomplishing this admittedly complex and ongoing, but also critically important, task. Consequently, we would like to know when you expect the operational plans required by the Act to be completed, how many staff FEMA has devoted to this task, and whether or not FEMA's new authorities are considered sufficient to get the job done.

#### Role of FEMA and the FEMA Administrator:

The Committee's investigation into Hurricane Katrina found that FEMA did not have sufficient authorities and resources with which to lead DHS, other Federal agencies, State and local governments, and the private sector in effectively responding to a catastrophic event. Consequently, the Act gave FEMA and its Administrator elevated and expanded roles in leading the nation's efforts to prepare for, protect against, respond to, recover from, and mitigate against the risk of natural disasters, acts of terrorism, and other man-made disasters. It made the FEMA Administrator an Executive Level II official (equivalent to the level of Deputy Secretary) and the principal advisor to the President, the Homeland Security Council, and the Secretary of Homeland Security on emergency management. It also gave the President the authority to make the FEMA Administrator a cabinet member during disasters. These changes are designed to ensure that FEMA has the political authority and clout to direct and coordinate the appropriate personnel and resources within DHS (which are substantial) and to coordinate across the Federal government when needed.

The draft NRF, however, fails to recognize this expanded and elevated role of FEMA and its Administrator. In the Roles and Responsibilities chapter, the draft Framework fails to even refer to either FEMA or its Administrator. Rather, as drafted, the NRF suggests that the Department has delegated key leadership and coordination responsibilities to individuals or entities other than FEMA or its Administrator. The draft NRF states correctly that the Secretary is the PFO for domestic incident management. However, the Secretary's authorities must be exercised and delegated in compliance with the Homeland Security Act, which provides the authorities to lead our nation's efforts to prepare for, protect against, respond to, recover from, and mitigate against the risk of natural disasters and man-made events to the Administrator of FEMA.

Interestingly, what we understand to be the last discussion draft NRF circulated to key stakeholders states, correctly, that the FEMA Administrator is the principle advisor to the President, Homeland Security Council, and the

Secretary of Homeland Security for all matters relating to emergency management; for whatever reason, the Department deleted this language from the draft released for public comment.

Contrary to Congress' clear intent in the Act, the draft NRF states only that the FEMA Administrator is the Secretary's principal advisor for "all matters related to emergency management." It notes that the role of the Secretary of Homeland Security "is to provide the President with an overall architecture for emergency response and to coordinate the Federal response." It points out the roles of the Homeland Security Council and the National Security Council. However, the draft NRF provides little information on the FEMA Administrator's responsibilities and duties, and fails to acknowledge the potential for the FEMA Administrator being made a member of the President's cabinet during a disaster. The final NRF must explain clearly the role of the FEMA Administrator as defined in the Act, as well as the Administrator's responsibilities with respect to authorities delegated to the Secretary in the Homeland Security.

To further confuse matters, the draft NRF also states that the Department's Director of Operations Coordination shall serve as the Secretary's "principal advisor" for the overall Departmental level of integration of "incident management operations." Neither the draft NRF, nor subsequent briefings provided to Committee staff, however, has clarified sufficiently how "emergency management" differs from "incident management." This lack of clarity raises concerns that the draft NRF conflicts with provisions in the Act which make the FEMA Administrator the lead in preparing for and responding to disasters, regardless of their cause.

Similarly, according to the draft NRF, FEMA's National Response Coordination Center (NRCC) will serve as FEMA's primary operations management center for most, but not all, national incidents. Indeed, the draft NRF suggests that parts of the National Operations Center (NOC) other than the NRCC, such as the 24/7 Watch and the Incident Management Planning Team (IMPT), will perform primary operations management for some incidents. The draft NRF, however, does not make clear for which incidents the NRCC or other parts of the NOC will be responsible. Moreover, the draft NRF states that other parts of the NOC will be involved in incident planning and management during disasters – but, again, it fails to specify the respective roles of the NRCC and the other parts of the NOC.

Given the severe consequences that can result when roles and responsibilities are not clearly defined, the final NRF must clarify these ambiguities consistent with the Act, including the role of the FEMA Administrator, the difference

between “emergency management” and “incident management,” and the respective roles and responsibilities of the NRCC and other parts of the NOC.

Finally, the Committee’s Hurricane Katrina investigation found that taking FEMA out of DHS would be a mistake, for, among other reasons, that it made no sense to have one agency responsible for the preparedness for and response to terrorists attacks and another agency responsible for the same activities for natural disasters, as many of the steps in preparedness and response are the same. The Committee concluded that the nation cannot afford the inefficiencies, duplication of effort and confusion of State and local officials, who would be forced to engage one system for natural disasters and another one for terrorist attacks. That is why the Act explicitly mandated that the Department must pursue a genuine all-hazards approach to preparedness and response. The draft NRF could be construed as separating natural disasters, where FEMA has the lead, from acts of terrorism and other man-made disasters, where the Department’s Director of Operations has the lead. Does this apparent construct put us on the path to implementing the same sort of potential inefficiencies, duplication of effort, and confusion that the Committee identified during its Hurricane Katrina investigation?

Federal Coordinating Officer and Principal Federal Official:

The draft NRF also fails to clarify the respective roles and responsibilities of the FCO and the PFO. As documented by every review of the response to Hurricane Katrina, confusion about the roles of the FCO and PFO contributed greatly to the failed response at all levels of government. To address this serious problem, the Act required the FEMA Administrator to ensure that the NRP, or its successor document, provide for a clear chain of command consistent with the Administrator being the principal Federal advisor on emergency management. The Act also narrowly circumscribes the role of the PFO. Indeed, the Act clearly prohibits the PFO from directing or replacing the incident command and exercising directional authority over the FCO or other Federal and State officials during a disaster.

The draft NRF, however, describes the PFO as “the lead Federal official in the field” during an incident and states that the PFO will coordinate the activities of other Federal officials involved in the response and serve as the primary representative with whom State and local officials interface. The draft NRF does state, as required by the Act, that the PFO will not direct or replace the incident command structure established at an incident. Additionally, the draft NRF states that the PFO does not have “line authority” over the FCO, Senior Federal Law Enforcement Official, a Department of Defense Joint Task Force Commander, or any State or local official.

Nevertheless, it is clear from our own observations, and from the comments of emergency managers who have reviewed the draft, that the potential for confusion and conflict between Federal officials involved in the response outlined in the NRF has not been resolved by these distinctions. For example, the draft NRF does not require that the PFO report to the FEMA Administrator or even keep the FEMA Administrator informed of his or her activities. Contrary to the lessons of Hurricane Katrina, the draft NRF appears to create two separate chains of command – one running from the FCO to the FEMA Administrator, and another running from the PFO to the Secretary. The draft NRF does not clearly specify which responsibilities lay with the FCO and which responsibilities lay with the PFO. While the Act specified that the PFO not have directive authority over Federal officials, the Department omitted that directive from the draft NRF. The draft NRF appears to give the PFO an expansive and operational-like role, instead of the more limited role envisioned by the Act. In contrast, language in what we understand to be the last discussion draft distributed to key stakeholders was much clearer and seemed to follow the requirements of the Act.

As you know, Congress' desire for clarity on this issue has prompted language in the House FY 2008 Department of Homeland Security Appropriations bill that would simply not allow DHS to fund the PFO position. While we share the frustration of members who support defunding, we have not expressed support for that effort thus far, because it could unnecessarily tie the Department's hands. However, it is essential that the final NRF demonstrates that the lessons from Hurricane Katrina have been learned in this area. Continued confusion is not an option.

#### Preparedness and Response:

The Committee's investigation found that the misalignment between the way the Department went about preparing for disasters and the way it, primarily through the previous incarnation of FEMA, directed the response greatly hampered the government's response.

There are many ways that preparedness directly affects response – though few are as important as planning. The draft NRF states that operational planners from multiple agencies have been assigned to the IMPT – an interagency group managed by the Department's Director of Operations Coordination – to develop strategic guidance and plans for the 15 National Planning Scenarios. The draft NRF assigns FEMA the responsibility to conduct operational planning to support these strategic plans.

This construct raises important issues that the Department must clarify in the final NRF: what is FEMA's role with respect to the strategic guidance and plans being developed by the IMPT, and how does the draft NRF ensure that those strategic plans will be consistent with FEMA's operational plans? Perhaps more importantly, how does this construct ensure that the Department does not repeat the same mistakes it made prior to Hurricane Katrina when it split preparedness from response?

Process:

The Act gives FEMA the responsibility for maintaining, and periodically reviewing and revising, the NRP and successors thereto. It also provides that, in doing so, the FEMA Administrator shall act in consultation with the National Advisory Council (NAC), an advisory body made up of representatives of State, local, tribal, private and nongovernmental entities. The Act envisions the NRP as a collaborative, national effort, led by FEMA.

In some respects, the process by which the revision of the NRP was undertaken was exemplary. In others respects, however, it was troublesome. We are disappointed, for example, that the NAC – which was designed to ensure an effective State, local, and first responder voice in the process and which was required by the Act to be established by December 2006 – is to meet for the first time only today, and therefore was not a part of the NRF development process. We were also surprised to learn that the steering committee that led the initial drafting process was chaired not by FEMA alone but jointly with the Preparedness Directorate, parts of which the Department renamed on April 1, 2007 as the National Protection and Programs Directorate (NPPD).

Despite these issues, the NRP revision process appears to have started off well. Beginning in December 2006, the Department convened a steering committee composed of representatives from emergency management, the fire service, law enforcement, and other key stakeholders to provide input on rewriting of the NRP. According to key stakeholders, the steering committee frequently consulted them, and they actively participated in various NRP working groups.

Around March 2007, however, FEMA and NPPD suspended the steering committee process and submitted a revised NRP to the Department's senior leadership for approval. In April 2007, the Department notified steering committee members that it needed additional time to consider all of the input that it received from other Federal Departments and agencies. The Department received approximately 800 agency comments.

At this point, the revision process appears to have been limited to a small number of individuals within DHS headquarters and FEMA leadership. Although we appreciate that the Department is now providing the current draft NRF for public comment, the nontransparency of that earlier stage clearly was a source of dismay for some of the stakeholders that had been actively participating in the rewriting process up until that time. In addition, there were significant delays at this stage. While the Act did not require FEMA to revise the NRP by a particular date, the Department itself repeatedly announced that it would issue a revised NRP by the beginning of hurricane season on June 1, 2007. The beginning of hurricane season passed, however, without a new NRP. In September 2007, the Department finally released a draft revised version of the NRP, re-named the NRF, for comment.

Perhaps of greatest concern, the version of the NRF that was released after this extended leadership review inexplicably appears to have eliminated, in some cases, important clarifications that had been incorporated in earlier drafts. Specifically, as noted above, the explanations of the role of the FEMA Administrator and of the respective roles of the PFO and FCO, appear to have been clearer and more comprehensive in what we understand to be the last discussion draft NRF circulated to key stakeholders.

In closing, we would like to encourage you to work closely with government officials and first responders as you move forward in revising the draft NRF and developing operational plans. As we are sure you realize, a very large part of the value of a response plan is found in the process of actually doing the planning. Additionally, since State and local governments have a lead role in disaster response, it is imperative that the Federal government work hand in hand with State and local governments in planning.

We look forward to working with you to finalize the NRF and to your responses to the questions raised by our comments.

Sincerely,

Joseph I. Lieberman Susan M. Collins  
Chairman Ranking Member  
Homeland Security and Homeland Security and  
Governmental Affairs Committee Governmental Affairs Committee

Mary L. Landrieu  
Chairman  
Ad Hoc Subcommittee on Disaster Response

