ABSTRACT

Lessons learned and public scrutiny resulting from the Gulf Coast hurricane disasters in 2005 led the Federal Emergency Management Agency (FEMA) to restructure its national incident response guidance. The National Response Framework (NRF) replaced the National Response Plan (NRP) in early 2008. The updated Framework has focused the attention of emergency management planning to, among other things, updating Emergency Operations Plans (EOPs) on a State and local jurisdictional level, utilizing an Emergency Support Function (ESF) model.

Since 2005, compliance mandates under the National Incident Management System (NIMS) have required local government entities to revise and update emergency operations plans to incorporate NIMS components. With the introduction of the NRF in 2008, the ESF model is now the recommended standard for local government EOPs under the NIMS compliance objectives. The ESF model provides for a coordinated response effort and mutual aid options local agencies may receive from State and Federal resources in the wake of an emergency. It also works to ensure that local entities themselves have a careful accounting of all of their own resources and capabilities to avoid another slow and inadequate response that was at the heart of the Hurricanes Katrina and Rita tragedies in 2005.

Key words: national response framework, emergency support function, local emergency management, emergency operations plan

INTRODUCTION

The 2005 hurricanes that struck the Gulf Coast brought inadequate emergency management and response to the attention of the American people and media. Although the media focused on the perceived failed response of the Federal government, the inadequate response from the local and State governments in Louisiana showcased the lack of understanding of National Incident Management System (NIMS) principles and the National Response Plan (NRP). Some emergency operations plans (EOPs) were only partially activated, while other EOPs were not activated at all. Local emergency management agencies’ lack of planning left hundreds of buses to succumb to flood waters instead of being used to evacuate citizens. State officials shared the blame as slow State resource activation left local emergency managers on their own without proper resources. Partially incorporating lessons learned from the 2005 hurricanes, the National Response Framework (NRF, or Framework) was developed to replace the NRP, placing new emphasis of the role of local government emergency planning and response. Paramount to the NRF effort is a new perspective on drafting local EOPs.

BACKGROUND ON FEDERAL EMERGENCY MANAGEMENT POLICY AND EOPs

This section provides a brief background on the evolution of the country’s emergency management framework and discusses the role of NIMS compliance in local EOPs. No comprehensive plan for Federal emergency response existed until 1979, when the Federal Emergency Management Agency (FEMA) was created. In 1988, Congress passed the Robert T. Stafford Disaster Relief and Emergency Assistance Act, giving FEMA the responsibility for coordinating...
government-wide relief efforts and established a system of Federal assistance to State and local governments, including a requirement that all States prepare, review, and update annually individual EOPs. The “Stafford Act” is designed to bring a systematic means of disaster assistance for State and local governments. The Homeland Security Act of 2002 reorganized FEMA under the Department of Homeland Security (DHS), which was formed following the September 11, 2001 terrorist attacks.

In 2003, Homeland Security Presidential Directive 5 (HSPD-5) charged the Secretary of DHS with developing NIMS stating that NIMS “will provide a consistent nationwide approach for Federal, State, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents, regardless of cause, size, or complexity.”

NIMS compliance has been a requirement for Homeland Security Grant funding on a local level since Fiscal Year 2005. In Fiscal Year 2007, NIMS compliance required local governments to revise and update EOPs to include both NIMS and NRP components. In Fiscal Year 2008, this metric was updated to include NRF components. NIMS principles are to be incorporated throughout the EOP because they are operations-intensive, especially in terms of unified command; advance planning is a necessity so the operations can be executed in an organized manner.

The long-term goal of NIMS is “to provide a consistent framework for all aspects of emergency management and incident response.” The basic premise of NIMS is that all incidents begin and end locally, and it is scalable from the smallest to the largest of incidents; NIMS does not take command away from State or local authorities, instead under NIMS the Federal government supports State and local authorities when their resources are overwhelmed or anticipated to be overwhelmed. EOPs are the centerpiece of local government comprehensive emergency management because of their scope, inclusion of wide array of local agencies, and cohesive planning for how agencies are to work together. The importance of local governments' maintenance of current EOPs, as an aspect of NIMS compliance, is a requirement for mitigation planning grants and disaster assistance. Thus, it is important to create or update an EOP not only for planning, coordination, and response purposes, but also for a local jurisdiction’s Federal funding.

WHY THE NRF FORMAT IS RECOMMENDED FOR LOCAL GOVERNMENT EOPS

The NRF formally replaced the NRP in March, 2008. Consequently, local governments are faced with the task of revising or rewriting their existing EOPs to adapt to NRF recommendations per NIMS Fiscal Year 2008 objectives. The NRF “presents the guiding principles that enable all response partners to prepare for and provide a unified national response to disasters and emergencies—from the smallest incident to the largest catastrophe. [It] establishes a comprehensive, national, all-hazards approach to domestic incident response.”

FEMA highlights three different structural formats in which an EOP may be drafted: traditional functional format, Emergency Support Function Annex (ESF) format, and agency/department-focused format. Although it is recommended that a local agency may follow a similar format to its State emergency management office’s EOP format, the NRF model includes an outline in ESF format so that State and local EOPs have comparable formats. If a state’s EOP follows an ESF format, it is encouraged that local agencies follow the same format so that the local ESFs can easily be supported by a state-level response. The NRF was written especially as a guide for government executives, emergency management practitioners, private sector, and non-governmental organization leaders. It focuses on operations, planning, and mitigation, including operating structures and tools used by first responders and emergency managers. The key theme to the NRF is to provide first responders, incident commanders, and emergency managers with guidelines for a unified response to an emergency situation.

*NIMS recommends certain sections be incorporated into the Basic Plan (and each ESF) entitled Situation and Assumptions, Concept of Operations, and Organization and Assignment of Responsibilities; these sections are tailored to the specific situation in the local jurisdiction.
The ESF model includes a Basic Plan, Emergency Support Function Annexes (ESFs), Support Annexes (to the EOP in general and to individualized ESFs), and Incident Annexes which expound on the ESF content with information such as agency standard operating procedures (SOPs) and organizational charts, and internal procedures. The Basic Plan contains implementation, geographical information about the local area (such as county particulars), resource procurement policies, and emergency operations center (EOC) operations.† ESFs are used by the Federal Government, States, and local jurisdictions as the primary mechanism to organize and provide assistance during an incident. An ESF describes the expected response strategy for various types of incidents and identifies tasks assigned to agencies included in the ESF. Generally, one local agency is the lead, or “primary” agency responsible for the operations included in an ESF, with multiple agencies serving as “supporting” agencies. For example, in ESF-4, Firefighting, the local fire department is the primary agency and the police department, health department, and department of public works may be included as support agencies with respective responsibilities.‡

†FEMA specifically recommends the basic plan in an ESF model contain the following sections: Purpose, Scope, Situations, and Assumptions; Concept of Operations (CONOPS); Organization and Assignment or Responsibilities; Direction, Control, and Coordination; Disaster Intelligence; Communications; Administration, Finance and Logistics; Plan Development and Maintenance; Authorities and References. (See Comprehensive Preparedness Guide (CPG) 101, “Producing Emergency Plans: A Guide for All-Hazard Emergency Operations Planning for State, Territorial, Local and Tribal Governments” for the full recommended EOP format at www.fema.gov/about/divisions/cpg.shtm).10

‡FEMA publishes the NRF Resource Center at www.fema.gov/NRF. The NRF Resource Center is an online portal of supporting documents, resources, and educational materials, intended to support emergency management practitioners. The resource center contains multiple supporting documents, including ESF, Support, and Incident Annexes and several informational documents, such as an overview of the main Stafford Act provisions, a guide to authorities and references, and an acronym list.
Attached to each ESF are Support Annexes, which present more detailed information on issues presented in the ESFs. This information is generally jurisdiction specific and may include SOPs of any and all ESF primary and support agencies, agency-specific plans, locations of medical facilities or food banks, and organizational charts. It is important to note that under many States’ public information laws, the public is entitled to view the EOP. For ESFs such as ESF #11, Agriculture and Natural Resources, the information may be redacted if it is contrary to the public’s interest to disclose it. For ESFs such as ESF #13 Public Safety and Security (sometimes titled Law Enforcement) this is relevant because certain information should not be available to the public because this knowledge could be abused or interfere with emergency response efforts.

When considering the outline prescribed by the NRF, it is important to note that State and local ESFs may have different lead agencies and different titles than Federal ESFs. This is particularly true for certain ESFs such as ESF #11, Agriculture and Natural Resources, and ESF #4, Firefighting, which on the Federal level are led by the Department of Agriculture, but on the local level could likely be led by central services or an analogous primary logistics agency, and the fire department, respectively. Generally, local ESF titles will be the same or similar and address many of the same issues as at the Federal level, however, some local drafters will choose to rename an ESF to more accurately describe their capabilities, more specific functions, or to match its State’s ESF. For example, some local governments have a more narrow focus for ESF #11, and simply title ESF #11 as “Food,” as opposed to “Agriculture and Natural Resources.”

**LEGAL FRAMEWORK FOR BASIC PLAN AND ESF PLANNING**

This section is meant to serve as a reference tool for local planners to legal references which are applicable to all EOPs, as well as legal areas which are likely to vary by State or jurisdiction. The EOP planning team should work with its jurisdiction’s law department in drafting the legal aspects of the EOP. These legal aspects will play a role in the basic plan, as well as the ESFs and any support or incident annexes.

As stated earlier, NIMS and the Stafford Act are the starting point for the legal analysis required for a local jurisdiction to draft an EOP. From there, a local jurisdiction must conduct subsequent legal research on a jurisdiction-specific basis to draft an EOP, but there is a commonality in terms of the research process and legal issues encountered in drafting EOPs. State law is the next resource to consult for State emergency management acts and emergency powers of the governor. Most States’ statutory law contains a section on emergency management and emergency powers. The EOP planning team should reference these laws in the plan and the law department should ensure that the EOP does not deviate from these laws. A State’s emergency management laws will typically govern the State EOP as well, which the local planning team should also look to for guidance. A local EOP must work within the State’s emergency declaration laws so that it is readily prepared to accept State assistance in an emergency incident.

In many states, the governor has express powers to declare a state of emergency. The governor’s declaration in a given locality will necessitate the receipt

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9 The primary agency for Federal ESF #4, Firefighting, is the US Forest Service, part of the Department of Agriculture.
of State aid to the locality. Typically, an emergency declaration made by the governor is governed under a renewable time limit, such as 30 days, and allows the governor to order evacuation from the stricken or threatened area, control the occupancy of premises in the emergency area, and authorize the use of private property.

A local jurisdiction also may have emergency response powers and laws that should be incorporated into the EOP. These laws could be local ordinances or State statutes specifically governing localities. In some local jurisdictions, the chief executive or manager has the power to declare a local state of emergency. In such a case, a local EOP should state that an emergency declaration by the local chief executive activates the EOP. The scope of this declaratory power, however, is often less than that of the governor, but varies from State to State. In some States such as Florida, local officials have the power to impose a curfew under a declared local state of emergency. In New Orleans prior to Hurricane Katrina, Mayor Ray Nagin had the power to order citizens to evacuate, albeit unsuccessfully. In other States, such as Maryland, the local chief executive has less power; the local chief executive does not have the power to compel evacuation of its citizens and a local state of emergency only lasts 7 days without reapproval of the county or city council.

Aside from emergency declaration and emergency management laws, there are other State laws that must be considered and addressed when drafting an EOP.

State statutes typically adopt any existing mutual aid compacts. The Emergency Management Assistance Compact (EMAC) is a nationwide compact among States administered by the National Emergency Management Association (NEMA), made up of State emergency management directors, to share resources in major disasters. EMAC also provides the legal mechanism for States to assist each other in times of disaster. It provides liability protection to individuals who travel to another jurisdiction to render aid during an emergency. States and regions also employ mutual aid agreements. Maryland, for example, adopted MEMAC, the Maryland Emergency Management Assistance Compact, which provides for mutual assistance and cooperation among jurisdictions who are members of the compact to manage intrastate emergencies. State tort law, which generally provides government employees with tort liability protection when acting within the scope of their public duties, and Good Samaritan law, protecting private citizen responders, shall also apply during an emergency incident.

Inclusion of applicable Federal, State, and local laws applies to ESFs as well. For example, ESF #8, Public Health and Medical Services, requires a review of the governor and public health officials’ powers and responsibilities in a public health emergency. Some States, such as Oklahoma and Maryland, have catastrophic health emergency laws, which allow the governor or State public health secretary to order citizens to submit to medical examination or testing, vaccination in a declared State of Emergency.

Numerous legal questions will need to be researched when drafting ESFs, depending on the situation that exists in that particular jurisdiction. For example in ESF #1, Transportation, it may be necessary to consult State statutory law to determine which local government and public school-owned vehicles are legally permitted to exceed the scope of their daily operations.

11See eg, GA Code Ann, §38-3-51(b) (2002) (A declaration of a state of emergency or disaster shall activate the emergency and disaster response and recovery aspects of the state and local emergency or disaster plans applicable to the political subdivision or area in question and shall be authority for the deployment of any supplies, equipment, and materials and facilities . . . made available pursuant to Articles 1 through 3 of this chapter . . .).

12See eg, GA Code Ann, §38-3-51 (c)(2), (d)(4) (The governor may Commandeer or utilize any private property if he finds this necessary to cope with the emergency or disaster . . .), and (d)(5) (The governor may Direct and compel the evacuation of all or part of the population from any stricken or threatened area within the state if he deems this action necessary for the preservation of life or other disaster mitigation, response, or recovery . . .). Vern’s Tex Code Ann, Gov Code §418.014(c) (A state of disaster may not continue for more than 30 days unless renewed by the governor.”) and §418.018(a); Wisc Stat Ann, §166.03(b)(1) (The duration of such state of emergency shall not exceed 60 days as to emergencies resulting from enemy action or 30 days as to emergencies resulting from natural or man-made disaster, unless either is extended by joint resolution of the legislature.) and (b)(4) (The governor may allocate materials and facilities in his or her discretion, and take, use and destroy private property for emergency management purposes.)

13All 50 States, the District of Columbia, Puerto Rico, and the US Virgin Islands are EMAC members.

14See also, NJ Stat Ann, 26:13-4(a) (2005) (“The State may requir[e] a physical examination or the provision of specimens of body secretions, excretions, fluids and discharge for laboratory examination of any person suspected of having a disease or health condition that necessitates an investigation . . .”).

15See, e.g., GA Code Ann, §§38-3-51(b) (2002) (A declaration of a state of emergency or disaster shall activate the emergency and disaster response and recovery aspects of the state and local emergency or disaster plans applicable to the political subdivision or area in question and shall be authority for the deployment of any supplies, equipment, and materials and facilities . . . made available pursuant to Articles 1 through 3 of this chapter . . .).
usage to assist with emergency evacuations. As another example, in the ESF governing debris management, State law may require consent order requests to be made by the State director of emergency management or the director of the State environmental department to establish temporary debris management sites.

**DRAFTING STANDARDS FOR LOCAL EOPs FOLLOWING THE ESF MODEL**

The relationship of Federal and State, tribal, and local plans and planning is described in the Comprehensive Preparedness Guide (CPG) 101, “Producing Emergency Plans: A Guide for All-Hazard Emergency Operations Planning for State, Territorial, Local and Tribal Governments” (CPG 101). CPG 101 is DHS’s key guide for locals to develop, implement, and maintain a “viable all-hazards” EOP. Although the guide is intended to assist all State, local, territorial and tribal governments, it stresses that every individual jurisdiction’s EOP must focus on its unique hazards and must reflect “what that community will do to protect itself from its unique hazards” with the “unique resources it has or can obtain.”

As stated earlier, the local agency should first determine which CPG-101 recommended format it should implement. Remember it is an objective of the Federal government to “ensure that all levels of government across the Nation have the capability to work efficiently and effectively together, using a national approach to domestic incident management.” This is best accomplished through a systematic approach to emergency preparedness planning, which includes compliance with the ESF recommended format, however, it should be noted that a locality may also consider drafting an EOP in the same format implemented in its State’s EOP. Most incidents require State support to the locality rather than the Federal government.

CPG 101 lays out a multistep planning process to assist local agencies in formulating their EOP and adjoining ESFs. The first two steps are forming a planning team and conducting research. Depending on the size of the local jurisdiction, the local agency should dedicate at least one full-time planner to drafting the EOP, and possibly more depending on the size of the jurisdiction and how much work must be done to formulate a new EOP. When drafting ESFs the planning team should include personnel from all related agencies within the local jurisdiction for planning input. As research is conducted, the planning team will be able to work with these primary and support agencies in identifying the capabilities and appropriate response procedures for each of its ESFs.

In the third step under the CPG 101 planning process, the planning team will analyze the information it has gathered in the first two steps. Included in this analysis should be a comparison of its capabilities to those identified in the State EOP. The planning team should also consult with other local emergency managers from within the State. Reaching out to neighboring jurisdictions not only assists the drafting process but also builds relationships among emergency managers and planners.

The fourth step is determining goals and objectives. In reality, this should be done from the outset of the first step by the emergency management leadership in the local jurisdiction, and should again be revisited once the planning team has completed its research and analysis. Finally, as the fifth step, the planning team should develop the EOP. Once the basic plan is complete, the planning team should commence writing the ESFs. If a State’s EOP follows an ESF format, the local EOP should replicate the same ESFs, applying its own set of capabilities, resources, and plans. The local EOP should contain the 15 ESFs, recommended by CPG-101 following the same subject format as the Federal ESFs identified in the NRF.

Many States or adjoining local jurisdictions may have templates that a local jurisdiction may implement in drafting its ESFs. A local jurisdiction should be wary of using local ESFs from jurisdictions in other States. They are often easily found through research, but each State has its unique set of emergency declaration and emergency management laws and procedures, that may differ from other States. Copying templates does not address a local jurisdiction’s unique situation and strict reliance on these will lessen the opportunity of networking between agencies and other jurisdictions.

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87CPG 101 also lays out a 14-question “checklist” that the planning team can ask itself to determine whether their EOP is NIMS compliant. The checklist is found in Appendix C of the CPG 101 guide.
Once the base plan, ESFs, and support and incident annexes are drafted by the planning team, the emergency manager or other planning team supervisor should review the plan. On approval by the emergency manager or supervisor, it should receive review and approval from the county agency or other top law officer for the local agency to ensure compliance with State laws and regulations. Finally, the executive officer for the local agency should review and sign the plan to make it official. It is important for the chief executive to review the plan because emergency management is a core obligation of his or her office. He or she must have “a clear understanding of his or her roles and responsibilities for successful emergency management and response.”

In the wake of an incident, the chief executive must be prepared to make critical, difficult decisions that may affect his or her entire community. Encouraging a thorough review of the plan by the local chief executive not only completes any legal formalities, but it also helps ensure that they are as prepared as possible to carry out their duties when an incident occurs.

When the plan has gone through its final legal reviews and signatures, it should be distributed to the appropriate local agency directors as needed, including all ESF primary and secondary agencies. As changes occur to the plan via planning, testing, training, or incident after action, the emergency manager or other responsible person for the EOP should have a system in place for updating and redistributing the plan. This includes ensuring that the various agency heads receive a copy of the updated plan and return a signed acknowledgment to the local jurisdictional office of emergency management indicating this. It is equally important that each agency EOC representative has a working knowledge of the EOP and subsequent updates.

**TRAINING AND EXERCISING**

The NRF states that a plan is a “continuous, evolving instrument of anticipated actions that maximize opportunities and guide response operations.” In other words, a plan is a living document, meaning that it must be strengthened through planning, tests, trainings, exercises, and real-world incidents. To ensure a local agency’s preparedness, its basic plan and ESFs must be evaluated regularly to ensure its capabilities are well-adapted to the changing laws, statutory responsibilities, community needs, and resource availabilities and capabilities. The local agency completes the reviews through planning, training, and exercises. According to the NRF, preparedness involves “a combination of planning, resources, training, exercising, and organizing to build, sustain, and improve operational capabilities.”

The NRF stresses that jurisdictions at all levels test and train on the DHS Target Capabilities List (TCL)—a list of national capabilities created by DHS to accompany the National Preparedness Guidelines, the national policy to strengthen the country’s preparedness. Many of these capabilities will be identified in a local jurisdiction’s EOP and ESFs. HSPD-5 directed the Secretary of DHS to develop and administer a National Incident Management System (NIMS) to provide for compatibility across Federal, State, and local governments. As part of acquiring NIMS-compliance, jurisdictions are charged with utilizing the Homeland Security Exercise and Evaluation Program (HSEEP) to test and train plans. HSEEP compliance is defined as “adherence to specific HSEEP-mandated practices for exercise program management, design, development, conduct, evaluation, and improvement planning.” For an entity to be considered HSEEP-compliant, it must satisfy distinct performance requirements:

1. Conducting an annual training and exercise plan workshop and developing and maintaining a multiyear training and exercise plan.

2. Planning and conducting exercises in accordance with the guidelines set forth in HSEEP Volumes I-III.
3. Developing and submitting a properly formatted After Action Report/Improvement Plan (AAR/IP). The format for the AAR/IP is found in HSEEP Volume III.

4. Tracking and implementing corrective actions identified in the AAR/IP.19

Training and Exercising procedures and expectations should be written into the EOP basic plan, with specific instructions that allow for the local jurisdiction to maintain HSEEP planning, training, and exercise compliance.

CONCLUSION

The NRF and companion NIMS guidelines for EOPs reflect important lessons learned as a result of the 2005 devastation in the Gulf Coast, heightened awareness of terrorist threats since the September 11 attacks, and increasing concerns about public health disasters, such as pandemic influenza. The importance of consistency in planning across jurisdictions, awareness of mutual aid compacts when local resources are exhausted, and unified command principles are now reflected in the current guidelines for EOPs. Significantly, not only are EOPs recommended as a key element of emergency preparedness, but also are included in NIMS compliance objectives tied into Federal grant funding and aid.

Following the NRF model promotes unity with the State EOP, which facilitates mutual aid and a unified response. Consistency in terminology (such as ESF titles and EOC structure) and advance knowledge of which agency serves as primary agency in a given incident and which serve in a supporting role increases communication. This ultimately provides for a plan that will reflect a jurisdiction’s current situation as conditions change and reduce the need for major revisions of the EOP in the future.

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REFERENCES