

National Infrastructure Advisory Council (NIAC)



The Framework for Dealing with Disasters and Related Interdependencies Working Group

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Overview

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- Scope
- Approach
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- Questions

Objective

- ❑ This study focuses on the United States' ability to respond to and recover from a major disaster that could result in a prolonged loss of infrastructure services expanding beyond a local area.
- ❑ The Desired Outcome is to identify areas that are impediments to:
 - Private sector and local/state government recovery of critical infrastructures, and
 - Deployment of needed federal resources.

Scope

- ❑ Includes analysis of all relevant sectors identified as Critical Infrastructures and Key Resources (CIKR) by the National Infrastructure Protection Plan (NIPP).
- ❑ Considers Federal, State, Local, Tribal, Territorial and international laws and authorities relevant to disaster recovery.
- ❑ Explores challenges presented by a longer than typical CIKR outage in a metropolitan area.

Approach

- ❑ Conducted a series of interviews with C-level executives from select critical infrastructure companies on emergency response, recovery, and dependencies.
- ❑ Conducted a one-day disaster scenario workshop that brought together key stakeholders from the private sectors, legal community, and government to develop a collaborative understanding of the challenges that would be presented by an extended infrastructure outage.
- ❑ Developed two hypothetical scenarios to stimulate and guide the Workshop discussions:
 - Scenario 1 – Accident; 2 week duration; D.C. Area
 - Scenario 2 – Terrorist; 3 week duration; National Capitol Region, adjacent counties & beyond.
- ❑ Both scenarios:
 - Initially impact the Electric Sector with secondary cascading impacts to Telecommunications, Water and other sectors.
 - Are centered on the National Capital Region.
 - Were developed to allow for insight into significant differences that could be encountered as a result of event duration, geographical scope and initial cause

Findings: Legal, Regulatory, and Policy Impediments

1. Legal, regulatory, and policy impediments exist that can hinder CIKR recovery/restoration operations in a major emergency
 - In some cases relief or waivers are available but the process slows recovery efforts
 - Some waiver processes are too lengthy to be applicable during disaster recovery.
 - CIKR operators faced with the choice of violating the law and relying on forgiveness or prosecutorial discretion
 - There is no systematic identification or cataloging of legal, regulatory, and policy impediments for CIKR response and recovery in major emergencies
 - Some can put private sector in violation of the law and even at risk for criminal penalty in its response to an emergency
 - Could deter CIKR operators from taking the appropriate/necessary actions to respond and recover

Findings: Legal, Regulatory, and Policy Impediments

2. Some common legal, regulatory, and policy impediments to CIKR operators during disaster recovery include:
 - Select environmental laws, rules, or restrictions (e.g., restrictions on generator hours of operation and fuel types).
 - Vehicle weight/size restrictions and port access restrictions
 - Waivers for document filing deadlines with regulatory agencies (e.g., bank back office requirements, energy utility FERC filings)
 - Some emergency area safety restrictions unintentionally hamper recovery efforts and create more risk
3. The Stafford Act and Defense Production Act (DPA) need to be updated to better address disaster recovery needs with regard to supporting CIKR operators in the private sector.

Findings: Improved Private Sector-Government Cooperation

4. **Credentialing and Access** remains a significant impediment to CIKR recovery / restoration efforts.
5. **Information Sharing:** Government and CIKR partners are still challenged by the lack of information sharing during planning, preparedness, response, and recovery.
 - Limited CIKR Private Sector Partners involved in planning efforts
 - Few Exercises focus on CIKR recovery
 - CIKR Private Sector Partners are not routinely included in the Emergency Operations Centers (EOCs)
6. **Water/Waste Water Services:** adverse effects of loss of water/waste water services upon populations, habitability and dependent sectors is not well understood by all emergency planners.
 - Entire population in emergency area may have to evacuate.
 - Water is currently not a separate Essential Support Function (ESF) in the National Response Framework (NRF).

Findings: Improved Private Sector-Government Cooperation

- 7. Improvements to emergency planning processes:** CIKR Private Sector restoration/ recovery is currently not included in many planning scenarios and exercises.
 - Private Industry comprises ~ 85% of the United States Critical Infrastructure.
 - CIKR participation is imperative for timely and effective response and recovery.

- 8. Multi-Jurisdictional Decision Making and Communications:** Timely and effective communications are needed between senior State Leaders, and Senior State and Federal Leaders, during an emergency that crosses multi-State / jurisdictional boundaries.
 - Potential of a misalignment in Senior State Leadership decision making.
 - May also need to address this issue for states dealing with international partners (e.g., Canada and Mexico)

Recommendation Focus Areas

I. Legal, Regulatory and Policy Impediments

- ❑ A Process for Addressing Legal, Regulatory, And Policy Impediments to Recovery
- ❑ Potential Congressional Actions to Address Legal, Regulatory, and Policy Impediments to Disaster Recovery/Preparedness
- ❑ Identified Common Legal, Regulatory, and Policy Impediments to Disaster Recovery/Preparedness

II. Improved Private Sector-Government Cooperative Efforts in Disaster Recovery

- ❑ Cooperative Response and Recovery for CIKR
- ❑ Cooperative Planning for CIKR Emergency Preparedness

Addressing Legal, Regulatory, and Policy Impediments

1. A Process for addressing legal, regulatory, and policy impediments to recovery:
 - A. Conduct a comprehensive effort at the federal, state and major metropolitan area levels to develop a catalog of laws and regulations to be suspended or modified during an emergency:
 1. Identify relevant disaster scenarios and compile existing response plans.
 2. Sort planned responses for compliance with applicable laws and regulations as well as interference with CIKR recovery.
 3. Draft emergency response orders for all cataloged instances of conflict where laws/rules can be modified, suspended, or waived to be included in disaster response plans.
 4. Where rules/laws cannot be modified, suspended, or waived, operational strategy should be modified for a work-around.
 - B. Government should examine and address legal and regulatory requirements for which there is no timely legal waiver process for CIKR operators during an emergency.

Addressing Legal, Regulatory, and Policy Impediments

2. Potential Congressional actions to address legal, regulatory, and policy impediments to disaster recovery and preparedness
 - A. The Federal Government should conduct a broad review and update of the Stafford Act to better address disaster recovery support for CIKR operators in the private sector.
 - B. The Federal Government needs to review and modify the Defense Production Act (DPA) to maximize ability to respond to CIKR damages during an emergency.
 - C. Government needs to address the lengthy waiver process for Environmental Impact Statements (EIS).

Addressing Legal, Regulatory, and Policy Impediments

3. Address identified common legal, regulatory, and policy impediments to disaster recovery and preparedness (not a comprehensive list):
 - A. Many CIKR operators need waivers for document filing deadlines with regulatory agencies during an emergency.
 - B. Emergency planners should address Water Sector restrictions on chlorine transportation between checkpoints during an emergency.
 - C. CIKR Operators will require relief from environmental laws, rules, or restrictions that could significantly and negatively affect recovery efforts.
 - D. Emergency planners should identify actions to assist in expediting vehicle restrictions, including driver hour limitations, road weight restrictions, port access restrictions, and others during emergencies.

Improving Cooperation in Disaster Recovery

4. Cooperative response and recovery

- A. DHS needs to provide coordination among partners to establish and implement a common, coordinated solution for CIKR operator credentialing and access in a disaster area during an emergency.
- B. Emergency planners should establish reliable process for information sharing
 - 1. Include private sector CIKR operators in EOC, and planning exercises.
 - 2. Establish sector-to-sector communication of needed information during a disaster to assist CIKR operators in their business continuity decision making.
 - 3. Leverage existing Information Sharing and Analysis Centers (ISACs) for coordination and cross-sector communication outside the disaster area.
 - 4. EOC decision makers need to be involved in establishing and communicating critical infrastructure recovery priorities.

Improving Cooperation in Disaster Recovery

5. Cooperative planning for CIKR emergency preparedness
 - B. Improve emergency planner understanding on effects water services interruptions upon populations, habitability, and dependent sectors.
 - C. Improve emergency planning processes by including private sector input in planning scenario development. Cooperatively developed scenarios will help to produce useful scenario outcomes for CIKR operators and as a result, a more coordinated CIKR emergency response and recovery. Key elements include:
 1. For CIKR Operators: involvement in exercise planning; regionally-based exercises; CIKR-relevant outcomes; clear understanding of roles and responsibilities; clearly established restoration priorities; process for validating resulting plans with smaller CIKR Operators.
 2. For Government: table top exercises focusing on communication between multiple levels of government and multiple jurisdictions during an emergency; clear understanding of roles and responsibilities.
 - D. Emergency planners and authorities need to address CIKR resource protection during an emergency, and establish guidance to prevent ad hoc commandeering by local authorities without regard broader recovery priorities.

Next Steps

- ❑ Continue examination of identified key issues and potential recommendation areas with Subject Matter Experts (SMEs) and government policy-makers for inclusion in written study.
- ❑ Draft Results and Recommendations presented to NIAC today
- ❑ Deliver Final Report and Recommendations to NIAC at April 2009 meeting.

Questions?