

NATIONAL INFRASTRUCTURE ADVISORY COUNCIL

BUSINESS MEETING AGENDA

J.W. Marriott Hotel
Capitol Ballroom (Salon H)
1331 Pennsylvania Avenue, NW
Washington, DC 20004
July 14, 2009
12:30 PM – 3:30 PM EDT

- I. OPENING OF MEETING** *Nancy J. Wong*, Designated Federal Officer (DFO), NIAC, Department of Homeland Security (DHS)
- II. ROLL CALL OF MEMBERS** *Nancy J. Wong*, DFO, NIAC, DHS
- III. OPENING REMARKS AND INTRODUCTIONS** NIAC Chairman *Erle A. Nye*, Chairman Emeritus, TXU Corp.
- Rand Beers*, Under Secretary, for the National Protection and Programs Directorate, DHS
- PARTICIPATING BUT NOT EXPECTED TO MAKE REMARKS:**
- Philip Reiting*, Deputy Under Secretary for the National Protection and Programs Directorate, DHS (*invited*)
- James L. Snyder*, Deputy Assistant Secretary for Infrastructure Protection, DHS
- Jason Brown*, Director Cyber Security Policy, Homeland Security Council (*invited*)
- IV. WORKING GROUP STATUS UPDATE** NIAC Chairman *Erle A. Nye* Presiding
- A. THE CRITICAL INFRASTRUCTURE RESILIENCE WORKING GROUP** *Wesley Bush*, President and COO, Northrop Grumman, NIAC Member; and *Margaret E. Grayson*, (former) Principal, Essential₂Management, NIAC Member

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- V. WORKING GROUP FINAL PRESENTATION AND DELIBERATION OF FINAL REPORT**
- A. THE FRAMEWORKS FOR DEALING WITH DISASTERS AND RELATED INTERDEPENDENCIES WORKING GROUP**
- NIAC Chairman *Erle A. Nye* Presiding
- Edmund G. Archuleta*, President and CEO, El Paso Water Utilities, NIAC Member, NIAC Member; *James B. Nicholson*, Chairman and CEO, PVS Chemicals, Inc., NIAC Member; and *The Honorable Tim Pawlenty*, Governor, The State of Minnesota, NIAC Member
- VI. CONTINUING BUSINESS**
- NIAC Chairman *Erle A. Nye*, Vice Chairman *Alfred R. Berkeley III*, NIAC Members
- VII. CLOSING REMARKS**
- James L. Snyder*, Deputy Assistant Secretary for Infrastructure Protection, DHS (*invited*)
- VIII. ADJOURNMENT**
- NIAC Chairman *Erle A. Nye*, Presiding

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MINUTES

NIAC MEMBERS PRESENT IN WASHINGTON:

Mr. Alfred R. Berkeley III; Lt. Gen. (ret.) Albert J. Edmonds; Ms. Margaret E. Grayson; Mr. Phillip Heasley; Mr. D.M. Houston; Mr. David Kepler; Mr. Thomas E. Noonan; Mr. Bruce A. Rohde; Dr. Linwood H. Rose; Mr. Michael Wallace; and Ms. Martha Wyrsh.

NIAC MEMBERS ATTENDING VIA CONFERENCE CALL:

Mr. Erle A. Nye; Chief (ret.) Gilbert G. Gallegos; Ms. Martha H. Marsh; Mr. Jim Nicholson; Hon. Tim Pawlenty; Mr. Gregory Peters; Mr. James A. Reid; Mr. Matthew Rose; and Mr. John Williams.

MEMBERS ABSENT:

Mr. Edmund G. Archuleta; Mr. David Bronczek; Mr. Wesley Bush; Commissioner Raymond W. Kelly; Mr. John Thompson; and Mr. Greg Wells.

SUBSTANTIVE POINTS OF CONTACT PRESENT IN WASHINGTON:

Mr. Brent Balgien (for Mr. Bruce A. Rohde); Mr. Gerald Buckwalter (for Mr. Wesley Bush); Mr. Bill Fisher (for Mr. Jim Nicholson); Ms. Tiffany Jones (for Mr. John W. Thompson); Ms. Brooke Lundquist-Beebe (for Mr. David Kepler); Mr. Bill Muston (for Chairman Nye); Dr. Ronald Luman (for Vice Chairman Berkeley); and Mr. Vance Taylor (for Mr. Archuleta).

SUBSTANTIVE POINTS OF CONTACT ATTENDING VIA CONFERENCE CALL:

Ms. Pat Andrew (for Ms. Margaret Grayson); Ms. Frances Paulson (for Mr. David Bronczek); and Mr. Williams Powell (for Mr. John M. Williams).

OTHER DIGNITARIES PRESENT:

Under Secretary Rand Beers, DHS; DASIP James L. Snyder, DHS; Mr. R. James Caverly, Director, Partnership and Outreach Division (POD); and Ms. Nancy Wong, DFO, NIAC, DHS.

I. OPENING OF MEETING

Nancy J. Wong, DFO, NIAC, DHS

Ms. Nancy Wong introduced herself as the Designated Federal Official (DFO) for the NIAC. She then welcomed Mr. Erle Nye, NIAC Chairman; Mr. Alfred Berkeley, NIAC Vice Chairman; Under Secretary Rand Beers, Deputy Assistant Secretary of Infrastructure Protection, James L. Snyder; and all of the members of the council and other Federal government representatives present and on the teleconference, as well as members of the press and public in attendance.

Ms. Wong stated that the NIAC Council is a presidential advisory committee created by Executive Order 13231 and amended by Executive Order 13286, Executive Order 13385 and Executive Order 13446. The NIAC is composed of members appointed by the president; membership includes senior executive expertise throughout the critical infrastructure in key resource areas identified in the Homeland Security Presidential Decision Directive 7 (HSPD-7).

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This council provides the President and the Secretary of the Department of Homeland Security (DHS) with advice on the security of physical and cyber infrastructure. During its seven year history, this council has conducted extensive studies advising the President and other Federal officials on matters ranging from the cooperation and partnership, securing the national critical infrastructure to policies and strategies involving risk assessment, information sharing and other protection strategies.

II. ROLL CALL

Nancy J. Wong, DFO, NIAC, DHS

After bringing the meeting to order, Ms. Wong called roll.

III. OPENING REMARKS AND INTRODUCTIONS

*NIAC Chairman Erle A. Nye,
Chairman Emeritus, TXU Corp.*

Chairman Nye thanked Ms. Wong and all the members for being present, stating that he was pleased so many representatives of the Council were either present or participating via teleconference. Mr. Nye welcomed the various members of the administration, specifically MG. James Snyder, Deputy Assistant Secretary for Infrastructure Protection at the Department of Homeland Security.

Mr. Nye continued, stating that in absence of an April meeting, he approved the minutes from the January 6, 2009 meeting. Mr. Nye stated the minutes could be amended if needed. Mr. Nye encouraged members to check for inaccuracies and to contact him or Ms. Nancy Wong regarding any corrections.

Chairman Nye asked Vice Chairman Alfred Berkeley to talk about his recent visit to the White House to hear President Barack Obama's speech on the administration's Cybersecurity Policy Review. Mr. Berkeley thanked Chairman Nye and stated that he was pleased to attend the speech on behalf of all the NIAC members. He also mentioned the administration and the President's interest in obtaining high level and sensible cybersecurity. He added that the various agencies of government were energized in the direction of protecting cyber assets and that a high-level office in the White House will continue to bring focus and interest. Mr. Berkeley expressed satisfaction with the Council's work and was encouraged to hear the President's view of cybersecurity as a top priority.

Chairman Nye thanked Mr. Berkeley. Chairman Nye also noted that the charter was under review, stating that he expects the Council to be reauthorized in some form. Chairman Nye added that the charter review is the reason for the September 8th, 2009 NIAC meeting scheduled earlier than usual, and if the Council is reauthorized it will continue with its regular October 13th meeting. He indicated that before proceeding on to the working group status update, a review of the Council's history would be helpful due to the upcoming charter review.

Mr. Nye noted that President Clinton created the President's Commission of Critical Infrastructure Protection in 1998. The commission was designed to strengthen the Nation's defenses against terrorism and other threats from both physical and cyber attack. It emphasized

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cooperation between private infrastructure owner/operators and government agencies. The current Council was created by President Bush to provide strategic advice on the security of critical infrastructures and now operates with the focused support of DHS.

Chairman Nye continued, stating that the Council conducts its affairs across a wide array of topics and provides advice that spans government as a whole. Studies have included topics related directly to cybersecurity, insider threats, intelligence sharing, pandemic preparedness, and others. Reports related specifically to cybersecurity include *The Vulnerability Disclosure Framework* and *The Prioritization of Cyber Vulnerabilities, Hardening of the Internet*, and a *Common Vulnerability Scoring System, and the Convergence of Physical and Cybersecurity Technologies*. Mr. Nye proceeded to recall the *Sector Partnership Model Report*; a report that resulted in the formation of a Critical Infrastructure Partnership Advisory Council (CIPAC) that engages newly formed Sector Coordinating Councils in a framework with their government counterparts. Mr. Nye noted that the *Pandemic Study* report was particularly interesting being faced with the prospect of an avian influenza pandemic. Mr. Nye stated that the Council provided a recommendation to public health authorities to add operational workers to priority lists for preventives and treatments for potential avian flu pandemic. The study also quantified the numbers of affected employees in each sector utilizing working definitions of what constituted operations.

Chairman Nye concluded by stating that the Council has completed 16 major reports and hopes to have 18 completed by September. He added that the recommendations had been implemented in material respects by the government and were well received.

Vice Chairman Berkeley informed Chairman Nye that Under Secretary Rand Beers was present for opening remarks. Mr. Nye welcomed the Under Secretary. Under Secretary Rand Beers thanked Chairman Nye, Vice Chairman Berkeley and everyone in attendance. Undersecretary Beers stated he was glad to be surrounded by people who keep national security issues in the forefront. Under Secretary Beers thanked Chairman Nye for highlighting the pandemic report because of its importance in today's society. Under Secretary Beers noted that Secretary Napolitano, Secretary Sebelius, and Secretary Duncan attended a White House summit with the President calling in from Italy. The discussion centered on the Homeland Security Council's potential planning procedures in the face of a pandemic influenza crisis. The major concern is that the influenza strain will return in a more virulent form in the fall.

Under Secretary Beers added that America faces significant challenges in the form of both hackers and malevolent adversaries penetrating to the heart of the Nation's most vital secrets both in the government and private sector. Under Secretary Beers stated that the hard work done to combat both threats is a testament to the value of the Council and why its input is always welcome. Under Secretary Beers once again thanked everyone for their efforts. Chairman Nye thanked Under Secretary Beers.

IV. WORKING GROUP STATUS UPDATE

NIAC Chairman *Erle A. Nye*
Presiding

Chairman Nye introduced Ms. Margaret Grayson and Mr. Gerald Buckwalter to present the first status update from the Critical Infrastructure Resilience Working Group.

**A. THE CRITICAL INFRASTRUCTURE
RESILIENCE WORKING GROUP**

Wesley Bush, President and COO, Northrop Grumman, NIAC Member; and
Margaret E. Grayson, Principal,
Essential₂Management, NIAC Member

Ms. Grayson opened the presentation by thanking Chairman Nye, the members of the NIAC Committee and the members of the audience for the opportunity to present the status of the study on critical infrastructure resilience. She noted that in the Strategic Partnership Assessment recommendation to the NIAC, the Working Group recommended a study to examine resilience. The current study is being undertaken to consider resilience, its appropriate roles within the critical infrastructure protection plans of the government and the public-private partnership structure discussed at the previous October meeting. Ms. Grayson added that she and Mr. Wesley Bush agreed to co-chair the organization of the group.

Ms. Grayson indicated that there are 18 critical infrastructures and key resources sectors and while all of them differ, the Study Group reached out to a significant body of sector specialists to understand the different types, constraints, and limitations at each phase. Through the outreach effort, the Study Group was able to formulate a definition of resilience as the ability to reduce the magnitude and/or duration of disruptive events. The Study Group is still completing the information gathering stage, moving into analysis of the findings and areas for potential recommendations. The study was designed to examine the protection of the nation's Critical Infrastructure and Key Resources (CI/KR) and the partnering strategies that enable protection to reach its highest potential. Ms. Grayson noted that it became clear that resilience is an integral component of critical infrastructure key resource protection and that the NIAC proposed an examination of resilience as a study in its own right.

The Critical Infrastructure Resilience study began with the examination of the definition of resilience and how it is identified and practiced within the various critical infrastructure sectors. This stage dealt with gaining knowledge and awareness of different perspectives. The Study Group began by gathering information on the capabilities inherent within the private sector. This helped the Study Group to identify what investments are needed and what might appropriately be provided by the government sector to ensure that there is a strengthening of resilience and infrastructure within both public and private sectors.

The information sharing platform is needed to keep the owners and operators of these private sector infrastructures fully engaged with the government in this process. It is an invaluable step for eliminating redundant efforts between the public and private sector partners. This can be accomplished while assuring the American people that the nation has the ability to respond and recover when faced with a natural disaster or an act of aggression. The study's scope examined critical infrastructures, resilience, government policies and programs that affect each of the 18

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critical infrastructure sectors, with an emphasis on resilience interdependencies and issues. Ms. Grayson introduced Mr. Gerald Buckwalter to further elaborate on the Study Group's findings.

Mr. Gerald Buckwalter thanked Ms. Grayson and acknowledged the hard work put into the study. The study's approach focused on identifying the working definition, then the key questions and information sources the study used. The Study Group's efforts focused on analyzing their findings. Over time, the Study Group worked to identify the primary areas for potential recommendations. Mr. Buckwalter stated the Study Group found that resilience is a complex topic and can be difficult to contain within any predefined boundaries. The Study Group sought to identify and collect information and perspectives from all potential sources, including existing research and government programs for resilience. Individual subject matter experts were consulted and held panel discussions with key sectors including banking and finance, energy, transportation, and communications. The discussions focused on the sectors' existing resilience practices and gaps.

The Study Group reviewed and compiled an open source library of more than 100 documents including academic works, commercial products, and government studies. A series of executive level interviews capped this effort, providing a balanced strategic level perspective to what had become the group's broad operational level knowledge. Mr. Buckwalter explained that with so many diverse parties, a sufficiently complex topic, and many different preconceived opinions, the Study Group needed to normalize the data collected. This process incorporated the comparison and analysis of the feedback from each conversation. Mr. Buckwalter stated that panel discussions with collections of experts from five key critical infrastructure sectors formed a strong base for understanding the resilience practices and needs of those sectors. The five sectors were selected for their particular ability to offer crucial insights into critical infrastructure resilience and understand the way they balance protection and resilience.

Mr. Buckwalter added research efforts led the Study Group to other organizations with experience or perspective on the subject. The Study Group conducted approximately a dozen interviews; some were selected for their unique perspective and opinions while others were selected to validate and clarify material that had previously been collected. Subjects were selected from a wide range of backgrounds, including academics, commercial business, and Federal, state, local and international agencies. They were also selected for their wide-ranging subject matter expertise on topics including policy, regulation, government programs, and industry standards. Private sector CEOs have made significant contributions to NIAC studies over the years, and the NIAC is making the effort to continue that tradition by seeking out the perspective and counsel of critical infrastructure CEOs and executives through a series of peer-to-peer interviews. The Study Group has made some substantial progress toward this engagement, conducting six interviews. The interviews gave the Study Group a better understanding of the issues that affect companies' leadership as they make decisions not only during day-to-day operations but concurrently during national crises. Each sector faces a unique set of challenges that include the interests of protecting their assets, ensuring their continuity of business, and maintaining employee welfare while responding to or mitigating a disaster. Mr. Buckwalter yielded the floor to Ms. Grayson to speak about the emerging findings.

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Ms. Grayson thanked Mr. Buckwalter, and stated that the Study Group is moving through the completion of the information gathering phase and beginning to look at areas for potential recommendations. The intent is to focus efforts on policy and program changes that, if implemented, would serve to make the critical infrastructure more resilient. The areas of recommended action fall into different steps: The first step is to look at policy initiatives within the government; items that are necessary to really support resilience-focused policy and practices within the private sector. The second step is to apply available mechanisms to achieve resilience. It is critical to maintain and keep a lively dialogue between the public sector and the private sector to maintain partnership and collaboration. From all of the interviews and information that came forward, the need for open dialogue is critical for a clear understanding of what is available from the private sector in their own resilience practices and how information is shared with the government partners to try to prevent redundant applications.

The study showed that there is cooperation among competing critical infrastructure and key resource participants. That competition is set aside in the face of a disaster or attack in the name of determining what is best for our nation.. The challenge then becomes cooperation between the government sector and private sector that will allow for an enhanced strengthening and resilience for America. The conversation then turned to Mr. Buckwalter to discuss the path forward in turning the findings into actionable recommendations.

Mr. Buckwalter then discussed the path forward and methods by which the Council could turn the findings into actionable recommendations.. He noted that the existing infrastructure protection policy framework may not adequately support resilience-focused risk management approaches that are employed by many private sector critical infrastructures. Key resource operators were identified and carried forward from the previous NIAC critical infrastructure partnership strategic assessment study. The Study Group found that there are some elements of policy and programs that could be better constructed to support a true resilience-based approach in DHS.

A main concern reflected by the panel groups was the lack of clarity around governance and the roles and responsibilities of government and critical infrastructure owners and operators in response to a disaster event or a critical infrastructure services interruption. CI/KR owners and operators need to have a better understanding of what they will be expected to do and how they can expect the government to lead during a crisis.

The operators also noted that there is significant room for improvement through better coordination among government agencies responsible for regulating each sector. CI/KR operators explained how in some sectors, different regulatory authorities regulate based on different sets of goals which may conflict with each other. Establishing infrastructure resilience should be a priority for regulators, but coordination among them will provide operators a consistent environment of oversight to achieve better resiliency. Competing regulations can impede the success of operator efforts to incorporate resilience into their business practices.

Private sector operators also expressed concern over the need for government and private sector collaboration when establishing policy, objectives, or regulation in any area concerning

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resilience. Without this collaboration, enacted policies will fall short of their intended result. Some sectors possess significant sector-level resilience simply due to the market incentives and mechanisms in place in that sector. These market mechanisms sometimes involve high levels of intra-sector cooperation (on things such as security and reliability standards, as well as mutual assistance agreements), and sometimes from high levels of competition. Other factors include customer demand for reliable services, sometimes resilience-focused procurement practices, among others. These mechanisms also have differing impacts and results in different sectors. The Study Group is exploring if and how resilience afforded by these market mechanisms could be applied to sectors where they are not currently present to achieve higher levels of resilience. Partnership and collaboration apply not just to policy but to programs as well. Cooperatively designed activities, including studies, performance metrics, and training, will yield better results when they are drafted by the government and the owners and operators as a collaborative effort.

A key issue is improving the critical infrastructure owners and operators' understanding of cross sector dependencies and supply chain risks. Supply chain risk is a significant focus among major corporations in almost every sector, but sometimes does not occur equally across the spectrum of smaller companies. Cross-sector critical infrastructure dependencies can pose significant and sometimes unknown levels of risk. So the operators expressed interest in participating in exercises and discussions that would help all involved parties to plan, to support dependent sectors, and to prepare for a more realistic set of risks. Mr. Buckwalter continued, stating that like other NIAC studies in the past, this study found that increased information sharing between critical infrastructure owner/operators and within the government and private sector partnership would allow CI/KR operators to develop stronger, more focused and cost-efficient continuity plans. Government emergency incident management and response activities also present opportunities to leverage the government's role in incident response, shortening service outages, and supporting critical infrastructure resilience. Providing CI/KR operators with a clearer understanding of governmental incident response procedures will allow the operators to better focus their own efforts, dovetail them with the government's efforts, and achieve a greater level of resilience. Stronger trust in relationships between executive leadership in government and industry will help to strengthen the public-private partnership, communicate key recovery information and simply get things done during a crisis. Each of these areas for action represent distinct opportunities in which carefully crafted and effective policy could help to strengthen resilience.

Ms. Grayson thanked Mr. Buckwalter and stated that the Study Group is beginning to analyze and synthesize all of the information and is beginning to structure it so that it provides clear direction and underpinning to the recommendations that are being developed. The objective is to complete the analysis of the findings, make well-supported, actionable recommendations, and to finalize a timely completion of the report. The target date for completion is for the September 8th meeting.

General Albert Edmonds asked Ms. Grayson if any of the CEOs she interviewed offered any ideas on improving incident management and rapid response or strengthening trust between both government and industry level executive leadership. Ms. Grayson responded that the Study Group structured several panels where CEOs within an industry sector contributed information

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and talked about incident management, rapid response, and the different approaches that they would take within their own companies to maintain a continuity of operations across the sector. In all cases they looked at ways that regulations can help and hinder, which leads into the last point: the trust in relationships, a request for a broader communication base between the public and private sectors so that there is a more clear understanding of government roles and responsibilities, private sector roles and responsibilities, and what resilience components currently exist that could be brought to the table when they are necessary.

Mr. Buckwalter also responded, clarifying one comment made by the CEOs and the panels relative to incident management and trust in relationship among the government industry. They were not only referring to the Federal government but to the relationship and understanding that must exist at the state and local level during incident responses.

Mr. Michael Wallace responded that the formation of the CI/KR Executive Industry Council was specifically intended to create a forum for private sector CEOs, allow cross-sector CEO-level individuals to communicate among themselves, and for that body as a whole to be able to communicate with the public sector.

Vice Chairman Berkeley asked Mr. Wallace how many sectors are involved in the CI/KR Executive Industry Council. Mr. Wallace responded that it includes nine sectors with individuals at the CEO level signed up to participate. The Council was also forming a small-private-sector-financed permanent staff to support it.

Mr. Thomas Noonan posed a question to Ms. Grayson and Mr. Buckwalter regarding the CEO interviews and the industry interviews. Mr. Noonan asked whether the Study Group found consistency or any kinds of measurement tools to measure resiliency. His second question was regarding incentives that would motivate the CEOs to become more or less resilient.

Mr. Grayson answered that the large CI/KR owners and operators view this as a tax. Most of the responses came to an agreement: the responsible course of action was for companies to maintain the business itself. Companies all look at resilience as necessary and as a responsibility to their shareholders to ensure that they can continue in operation and provide the resources that they are providing to their customer base. More communication is necessary, as well as more awareness for potential complications involved in the implementation of completing regulations. Ms. Grayson concluded she believes owners and operators view this as an opportunity to improve communication, build the trust, and work in a sharing relationship so that they can compare their own best practices with current government procedure in order to avoid unnecessary regulation.

Mr. Noonan asked whether or not the Study Group has identified a gold standard through the process of the interviews.

Ms. Grayson responded to Mr. Noonan stating that because of the diversity across the sectors, each sector possesses unique characteristics that have to be considered when establishing a definition. If a common goal is within a reasonable framework of cost, then the Study Group will do everything that is possible to strengthen the resilience capability. The government has a role

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and responsibility in ensuring that the continuity of operations and the critical infrastructure capabilities at a high level are maintained for all citizens, and how that works within the private sector requires understanding, communication, cooperation, and the ability to identify redundancies.

Additionally, Mr. David Kepler commented that it would be beneficial to include within the report some guidance to improve understanding of cross-sector and supply chain risk. Interdependency is a key issue that needs to be understood by all sectors. In the current economy, the same capabilities that existed five years ago may not exist now due to changing infrastructure. The value of a group like the NIAC is to examine cross-sector interdependencies and see if there is macro-exposures that the economy may have driven that no one could capture in a sector-by-sector analysis.

Vice Chairman Berkeley asked Ms. Grayson if the Study Group looked at the issues of improving regulations, adding that the Council has looked at the issue of whether regulations hindered resiliency. Vice Chairman Berkeley concluded that he remembered a classic example of medical licenses going from state to state, but how there are many similar issues. He encouraged the Study Group to have a dimension of hindered resiliency in the study as well.

Ms. Grayson answered that the Study Group has asked the CEOs to look at and evaluate regulations that might inhibit the ability to cooperate in a disaster.

Vice Chairman Berkeley mentioned Mr. Albert Edmonds' question about stronger trust in relationships. Referring to a briefing with Ambassador McNamara, the Directorate of National Intelligence, the Vice Chairman mentioned the issues from the CEO interviews completed in an earlier study and stated that CEOs from various sectors were invited to gather for dinner in order to familiarize themselves with each other in the face of rapid turnover among CEOs and governmental appointees. Vice Chairman Berkeley concluded by thanking Ms. Grayson and Mr. Buckwalter.

V. WORKING GROUP FINAL PRESENTATION AND DELIBERATION OF FINAL REPORT

NIAC Chairman *Erle A. Nye* Presiding

Chairman Nye then turned the discussion to the Frameworks for Dealing with Disasters and Related Interdependencies Working Group, presented by Mr. James B. Nicholson, The Honorable Tim Pawlenty, Mr. Vance Taylor and Ms. Robin Holliday.

A. THE FRAMEWORKS FOR DEALING WITH DISASTERS AND RELATED INTERDEPENDENCIES

Edmund G. Archuleta, President and CEO, El Paso Water Utilities, NIAC Member, NIAC Member; *James B. Nicholson*, Chairman and CEO, PVS Chemicals, Inc., NIAC Member; and *The Honorable Tim Pawlenty*, Governor,

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WORKING GROUP

The State of Minnesota, NIAC Member

Governor Tim Pawlenty thanked Chairman Nye and Vice Chairman Berkeley as well as Mr. Edmund Archuleta for the wonderful work in contributing to the report and Mr. Jason Rohloff, from the Governor's staff.

Governor Pawlenty indicated that the recommendations represent a significant opportunity to improve critical infrastructure recovery capabilities and subsequent community recovery following a disaster event. The study provided a critically needed missing element to disaster recovery planning and specifically the perspective of private sector critical infrastructure owners and operators on the challenges they face restoring services and supporting more broadly community recovery. The recommendations address challenges faced by Federal agencies, the establishment of best practices by state and local governments, and the lessons learned for low-cost implementable policy solutions. The recommended legislative changes in the report will strengthen the ability of the Federal government in support of critical infrastructure and key resource operators in an emergency. These actions will improve the government's ability to collaborate with CI/KR owners and operators, respond to emergencies, and protect the public welfare.

Governor Pawlenty yielded the floor to Mr. James Nicholson to share his perspective about the process and the report. Governor Pawlenty noted that Mr. Edmund Archuleta was unexpectedly called away at the last minute and was unable to participate in the meeting, but his Point of Contact was present to give his portion of the report.

Mr. James Nicholson thanked Governor Pawlenty, Chairman Nye, Vice Chairman Berkeley, Under Secretary Beers and Vice Assistant Secretary Snyder, along with fellow NIAC members.

Mr. Nicholson noted that a critical factor in completing this was promoting cross-sector understanding of the challenges each sector faces, as well as the planning and preparation that currently exists. This dialogue among the different sectors and, more importantly, between the private sector and the relevant government agencies and officials is what the Council hopes to capture and duplicate across the country. The report outlines recommendations designed to help achieve this goal. Private sector critical infrastructure owner and operators involved in planning and response are critical to government officials being able to make informed decisions that will optimize emergency response efforts.

Mr. Nicholson thanked Mr. Bill Fisher, his point of contact, and turned it over to Mr. Vance Taylor, who spoke on behalf of Mr. Edmund Archuleta.

Mr. Vance Taylor began the presentation by thanking Mr. Nicholson, Chairman Nye, Vice Chairman Berkeley, and Assistant Secretary Snyder. Mr. Taylor also thanked the working group members and the points of contact for the study: Governor Pawlenty, Jason Rohloff, Dr. Ron Luman, the NIAC and DHS staff including Mr. Jim Caverly, Mr. Craig Bamberger, Mr. Bill

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Radcliff, and Mr. Mike Schelble. Mr. Taylor introduced Ms. Robin Holliday, who presented the Study Group's process and findings.

Ms. Holliday thanked Mr. Vance Taylor and the NIAC members for the opportunity to present. The Frameworks Study Group focused 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 the local area. The desired outcome was to identify impediments to the following two areas: private sector and local state and government recovery of critical infrastructure; and the deployment of needed Federal resources. Particular emphasis was placed on infrastructure interdependencies that occur as a result of a prolonged disaster event and the manner in which they affect response and recovery efforts and the identification of how legal, regulatory and policy issues can hinder or enhance these activities. The study's purpose was to identify the potential challenges and obstacles that critical infrastructure operators and government officials would face during such an event. This allowed the NIAC to develop policy recommendations that would help government and private sector leaders to address these areas of need. The results of this study have applicability in three areas: Federal, state and local government legislation, regulatory and policy improvements; private sector business continuity planning and risk mitigation efforts; and cooperation efforts between Federal, state, and local governments and the critical infrastructure sectors.

The scope of the study had three main factors: inclusiveness of all sectors identified by the NIAC, consideration of Federal, state and local regulations and policies relevant to disaster recovery and focusing on the longer term outage effects across sectors.

Ms. Holliday noted that the study's approach was twofold: the first involved interviews with C-level executives from critical infrastructure companies as well as select state and federal officials. There were a total of 18 separate interviews and numerous follow-up conversations. The NIAC Working Group extended its sincere appreciation to these executives for their insights and contributions. These interviews not only served to identify key issues and impediments, but also strategic level concerns. The second part of the approach was a facilitated one-day workshop held in November of last year that brought together over 40 key stakeholders from CI/KR operators in the private sector, the legal community, as well as local, state, and federal government authority representatives. The interaction among the CI/KR operators and government leaders provided valuable insights on the interdependency effects among the sectors, highlighting obstacles as well as work around solutions for different sectors. The workshop included two hypothetical scenarios that were developed with the assistance of the National Infrastructure Simulation and Analysis Center, a DHS center run by Los Alamos and Sandia National Laboratories. Both scenarios were set in the Washington, D.C., metropolitan area and were developed to provide an operational context that allowed the workshop participants to get insight into the cascading effects between the sectors, as well the differences encountered as a result of differing event duration and geographic scope. The study's first scenario was posed as an accident disrupting the electric power system affecting a large portion of the D.C. area with restoration lasting up to two weeks. The second scenario was posed as a terrorist-originated event disrupting the greater D.C. metropolitan areas including adjacent counties and beyond with restoration efforts lasting up to three weeks. In both scenarios, the initial triggering event

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occurred to the electric sector with primary follow-on affects cascading to telecommunications, water and other sectors. All sectors were affected to differing degrees.

The Study Group found ample evidence that the statutes and regulations that protect communities during steady state periods can have significant negative impact to CI/KR restoration during emergency response efforts and, in turn, have potential for significant detriment to the public welfare by unnecessarily extending outages of critical infrastructure services which are vitally needed for community recovery. These legal and policy impediments uncovered by the Study Group prove particularly challenging because they exist at the state, local and Federal level of government. Broadly applicable findings on statutory, regulatory and policy impediments included the following: the need for a process for timely release or waiver from statutory and regulatory restrictions where the existing waiver process is too lengthy to adequately support the urgency of disaster recovery efforts.

In many cases, statutory and regulatory restrictions can place CI/KR operators in legal jeopardy for pursuing actions that are clearly in the common good. Although no cases in which CI/KR operators were prosecuted for these transgressions were discovered, the threat of legal penalty is clearly a deterrent to necessary actions in these types of cases. The conclusion is that advanced preparation of plans and processes have the potential to significantly improve CI/KR recovery efforts and thus speed community recovery, supporting public health, and the public good.

The recommendation is that DHS institutionalize and provide funding to develop and maintain catalogues of specific laws and regulations that may need to be suspended or modified following a disaster. This process was originally developed for the city of New York by the law firm Pillsbury, Winthrop Shaw, & Pittman. Through proliferation of this process, along with funding to support its application, state and local government will be able to make adequate preparations for disaster events that cause CI/KR outages. The recommendation also highlights a need for CI/KR operators to participate in the process and help each relevant level of government understand the challenges that they face or will face in their recovery operations.

Congress should validate the alternative arrangements rule that the Council on Environmental Quality has used to expedite environmental impact statement requirements during emergencies. The validity of this rule has been left in doubt by Supreme Court cases and may not stand as a means to addressing disaster recovery challenges if Congress does not act to validate its use in this manner. Mr. Taylor added that state and local government should examine their laws for environmental impact statement requirements and other similarly restrictive requirements that do not currently have a timely waiver process. Federal and state government should take steps to address vehicle movement restrictions that impede cooperative recovery assistance programs or movement of needed resources to a disaster area.

As a solution to each of the impediments to recovery identified in the review process, the relevant government body should seek to establish a legal workaround or remedial legislation to address the problem that is posed.

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Ms. Holliday stated that the Study Group applied significant resources and effort towards exploring the utility of existing federal laws and disaster recovery, specifically the Stafford Act and the Defense Production Act. These two laws are the Federal disaster response mechanisms, and the groups sought to identify gaps in capability from threats that have emerged since the laws were originally enacted.

The Study Group identified recommendations to ensure the applicability of these laws to threats and challenges presented in today's world. The Study Group recommends that the executive branch conduct a review of the Stafford Act to assure applicability of the act to critical infrastructure recovery for all hazards, including chemical, biological, nuclear, cyber, and terrorist events. DHS should request clarification from Congress on whether restrictive interpretation of the Stafford Act that avoids benefiting the private sector, such as appears to have been experienced following Hurricane Katrina, is not intended. This will help to ensure that the public does not suffer due to excessive concern to deny benefit to infrastructure operators in the private sector.

For the DPA, the Study Group recommends that Congress conduct a major review of the Act to maximize potential utility for restoration of critical infrastructures. The Study Group also recommends educational efforts to achieve greater understanding of the Act within government at all levels as well as among critical infrastructure sectors and operators.

Ms. Holliday stated that through research and discussion with state and Federal officials, the study found that success of Federal policy in disaster recovery will be dependent upon a strong collaborative relationship between DHS infrastructure protection and the Federal Emergency Management Agency. The Study Group found that the ability of these two organizations to work together under the National Response Framework during a crisis will strongly influence the outcome of critical infrastructure recovery during a crisis response. Coordination and decision-making can be improved by the following things: participation of CI/KR operators in emergency operation centers, standardizing protocols for credentialing and access in a disaster area, and CI/KR operator involvement in emergency planning and exercises. Existing plans and approaches for disaster recovery underestimate or overlook community and CI/KR operator dependencies upon drinking water and waste water services for recovery.

Mr. Taylor made his final remarks on the report, stating that, to address these challenges articulated repeatedly by CI/KR operators during the study, the Working Group made the following recommendations: that DHS collect, develop and disseminate best practices for state and local government credentialing processes to improve needed CI/KR worker access to a disaster recovery area; that DHS compile and disseminate best practices for state and local Emergency Operation Centers and information sharing for disaster recovery efforts. The Study Group identified private sector Emergency Operation Center participation and ISAC involvement in state and local coordination as key elements for private sector CI/KR operator recovery efforts. For private sector involvement in emergency operation centers, the Working Group recommends application of the sector partnership model. This would alleviate government ethical and legal concerns with regards to private sector information sharing.

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Another needed action identified by the working group was determining best practices to support state and local coordination on critical infrastructure restoration priorities.

DHS should develop and disseminate a best practices guide intended for state and local government disaster planning exercises. These best practices will improve preparedness exercises at all levels through inclusion of private sector CI/KR operators. Key elements to improving exercises include the following: regionally-based exercises involving CI/KR operators and emphasizing CI/KR recovery; tabletop exercises for communication between different levels of government and jurisdictions; CI/KR operator involvement in after-action review of disaster events and exercises to identify gaps and lessons learned; updates to guidance documents and response plans based on outcomes and lessons learned from exercises in disaster events. The Study Group also recommends that planning established measures to protect private sector CI/KR operator resources in a disaster area include prevention of ad-hoc commandeering by local officials.

Mr. Taylor mentioned a set of recommendations made by the Study Group to address the study's findings on the challenges presented by current planning to address water services recovery. The Study Group recommends that under the National Response Framework (NRF), that water services are elevated to its own emergency support function. This will assure that water services receive an appropriate level of attention and resources during recovery efforts, thereby better supporting the recovery of communities and the CI/KR sectors relying upon them. The recommendation is structured in a manner that is attuned to the sensitivities of state and local planners and the potential cost that might be incurred by such a change. At the state level, emergency managers can apply current structures to match changes to the NRF, which they can apply in a manner most efficient to them. These changes should be applied during the NRF review cycle and, in the interim, Federal Emergency Management Agency (FEMA) should consolidate responsibility for water services support under Environmental Protection Agency (EPA) or the U.S. Army Corps of Engineers. This effort should educate planners and involve organizations on the reliance of public health and welfare and other dependent sectors on water services. This effort will help to establish appropriate emphasis and investment in these protective measures.

Part of the study focused on the ability to respond and recover from major disasters resulting in prolonged and widespread loss of infrastructure services. The Study Group relied upon C-level executive interviews and a facilitated scenario-based workshop with participants from government agencies and the different sectors. The Study Group identified policy recommendations for implementation in the following areas: addressing legal and policy impediments to CI/KR recovery, improving cooperative planning, and fostering improved private sector/governmental cooperation and communication.

Mr. Taylor encouraged everyone to look at the details contained in this report for a more thorough understanding of the findings on which the recommendations are supported. Mr. Taylor concluded by opening up the floor to any questions from the NIAC members about the study.

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General Albert Edmonds commended the group for the report, adding that the prioritization of water is absolutely essential and critical. He suggested that since the group has found some real specific laws and regulations that need to be dealt with, the group should try to encourage Congress to give provisions that allow the Federal government, including executive level government and governors, to have blanket waivers.

Chairman Nye replied, asking Governor Pawlenty if he heard Mr. Edmonds' comments. Governor Pawlenty responded stating that he believed it was a great idea.

Vice Chairman Berkeley commented that Ms. Nancy Wong reminded him that the NIAC can incorporate suggestions into the final report if the Working Group works on it. The Council should have some language that generalizes both a request to state level government but also to the U.S. Congress.

Ms. Martha Wyrsh commented on the importance of the municipalities and states to focus in on these issues. Only a relatively few have done so, and that the NIAC should share the report beyond the Council, because it would be beneficial. Mr. Taylor agreed.

Ms. Grayson commented that another point to explore is addressing areas involving critical needs like water in a state or a local community where financial resources or support might not be at a level necessary to ensure continuous service and what kind of emergency funding or planning may be need to be made available for these local communities.

Chairman Nye commented that Ms. Grayson had a good point. Vice Chairman Berkeley commented that there were no more questions. Chairman Nye thanked Mr. Berkeley and asked Governor Pawlenty or Mr. Jim Nicholson if they had any more comments. Governor Pawlenty responded stating that he nothing further. Chairman Nye stated that he would entertain a motion to approve the report with the understanding that approval would be subject to further additions in accordance with Mr. Berkeley's idea.

Chairman Nye asked if there was a motion to approve the report, after which, the Council approved the report.

Chairman Nye thanked Governor Pawlenty and Mr. Nicholson for their hard work.

VI. CONTINUING BUSINESS

NIAC Chairman *Erle A. Nye*, Vice Chairman *Alfred R. Berkeley III*, NIAC Members

Chairman Nye then introduced Deputy Assistant Secretary for Infrastructure Protection, Mr. James Snyder for closing remarks.

VII. CLOSING REMARKS

James L. Snyder, Deputy Assistant Secretary for Infrastructure Protection, DHS (*invited*)

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MG James Snyder thanked Chairman Nye, Vice Chairman Berkeley, and the distinguished NIAC members participating both in person and on the phone. He noted that all the reports were well done and well presented, including the initial findings of the resiliency study. He emphasized that the Council's input was important to DHS, and the soon to be 18 reports represent a healthy level of activity that has greatly informed the government to the interests and concerns of the private sector for critical infrastructure protection.

MG Snyder thanked everyone for their efforts, and commended the quality of the reports. DHS was and is impressed with the level of engagement and quality of the products developed by the Council. He thanked everyone for the opportunity to be present, and reminded everyone that Under Secretary Beers was also pleased to attend. DHS takes the NIAC input in high regard and will continue to work together with NIAC to improve the security of the national infrastructure.

VIII. ADJOURNMENT

NIAC Chairman *Erle A. Nye*, Presiding

Chairman Nye thanked Secretary Snyder, stating that the Council appreciates his presence and his support. Chairman Nye commented that the great amount of the Council's progress has depended upon support, cooperation and involvement from the government side. The Council will be advancing the Framework study to the President and DHS, and the Council will look forward to meeting with everyone in September to hear from Ms. Grayson, Mr. Wesley Bush, and their team. He concluded by noting that he appreciated everyone's participation. The Chairman adjourned the meeting.

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I hereby certify the foregoing minutes accurately represent the discussion and events that transpired at the meeting held on the date first noted above.

By: 
Erle A. Nye, Chairman, NIAC

Date: 9/21/09