

Legal Landscape



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Commissioner

President's Commission on Critical Infrastructure Protection

<http://www.pccip.gov>

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Components of the “Legal Landscape”

- ◆ Legal challenges from Executive Order 13010
 - Sec. 4(d): Legal & Policy Issues
 - (d) determine what legal and policy issues are raised by efforts to protect critical infrastructures and assess how these issues should be addressed . . .
 - Sec. 4(f): Statutory Changes
 - (f) propose any statutory or regulatory changes necessary to effect [the Commission’s] recommendations . . .

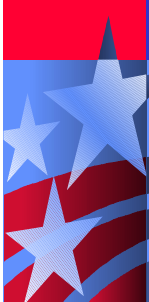
- ◆ Legal challenges from PCCIP’s Chairman
 - “Legal landscape”
 - “Regulatory landscape”

- ◆ Legal challenges from Commission recommendations



“Legal Landscape” Projects

- I. Survey of federal agency authorities relating to infrastructure assurance and formation of PCCIP “Legal Advisory Group”
- II. “Legal Landscape” & “Regulatory Landscape” briefings and reports
- III. Legal Authorities Database
- IV. Legal issues generation and research relating to Commission recommendations



I. Survey of Agency Authorities & the Legal Advisory Group

- ◆ PCCIP established contacts with the General Counsels' offices of 30+ federal agencies with role in infrastructure assurance
- ◆ Representatives surveyed to determine relevant legal authorities
- ◆ Definition of "Infrastructure Assurance"
- ◆ The surety of readiness, reliability and continuity of infrastructures such that they are:
 - (1) Less vulnerable to disruptions or attack;
 - (2) Harmed to a lesser degree in the event of a disruption or attack; &
 - (3) Can be readily reconstituted to reestablish vital capabilities

Survey Process:

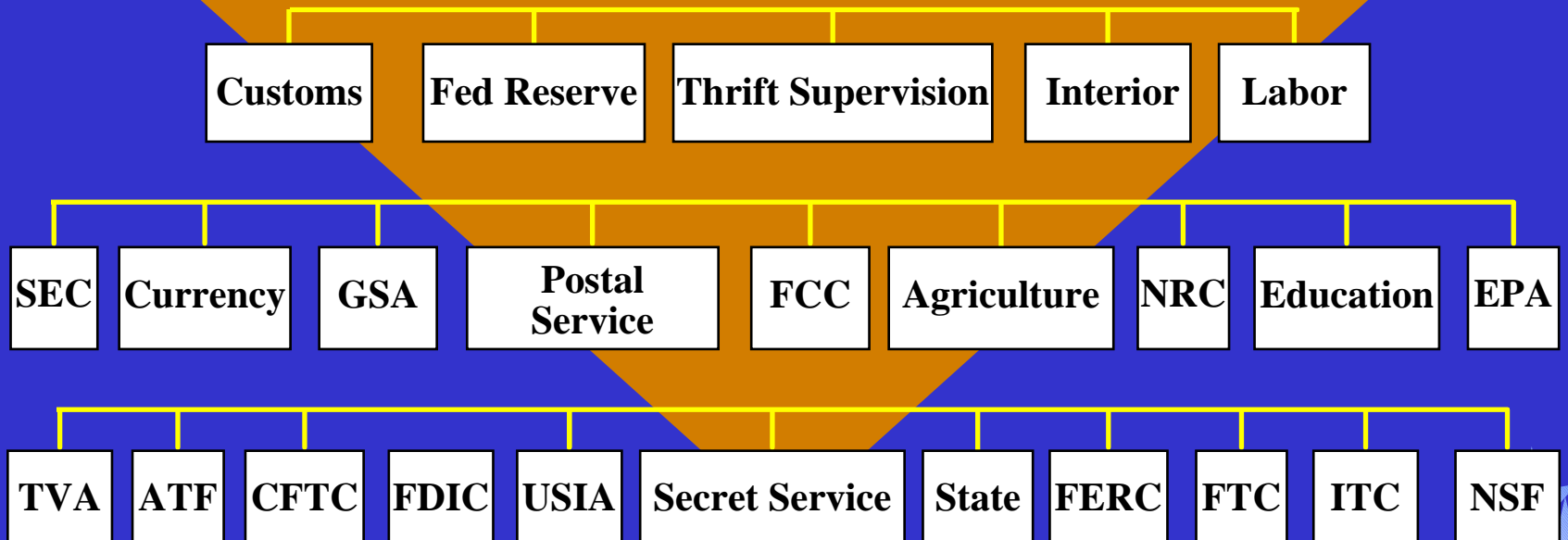
	1. Infrastructure less vulnerable to disruption or attack				2. Infrastructure harmed to a lesser degree in event of disruption or attack				3. Infrastructure readily reconstituted to reestablish vital capabilities				4. Other government entities with stake in infrastructure assurance				5. Plans and Projects "under construction"			
	Auth.		Mech.		Auth.		Mech.		Auth.		Mech.		Auth.		Mech.		Auth.		Mech.	
	P	C	P	C	P	C	P	C	P	C	P	C	P	C	P	C	P	C	P	C
Telecommunications																				
Electrical Power Systems																				
Gas & Oil Storage and Transportation																				
Banking and Finance																				
Transportation																				
Water Supply Systems																				
Emergency Services (Medical, Police, Fire, Rescue)																				
Government Services																				

Legal Outreach

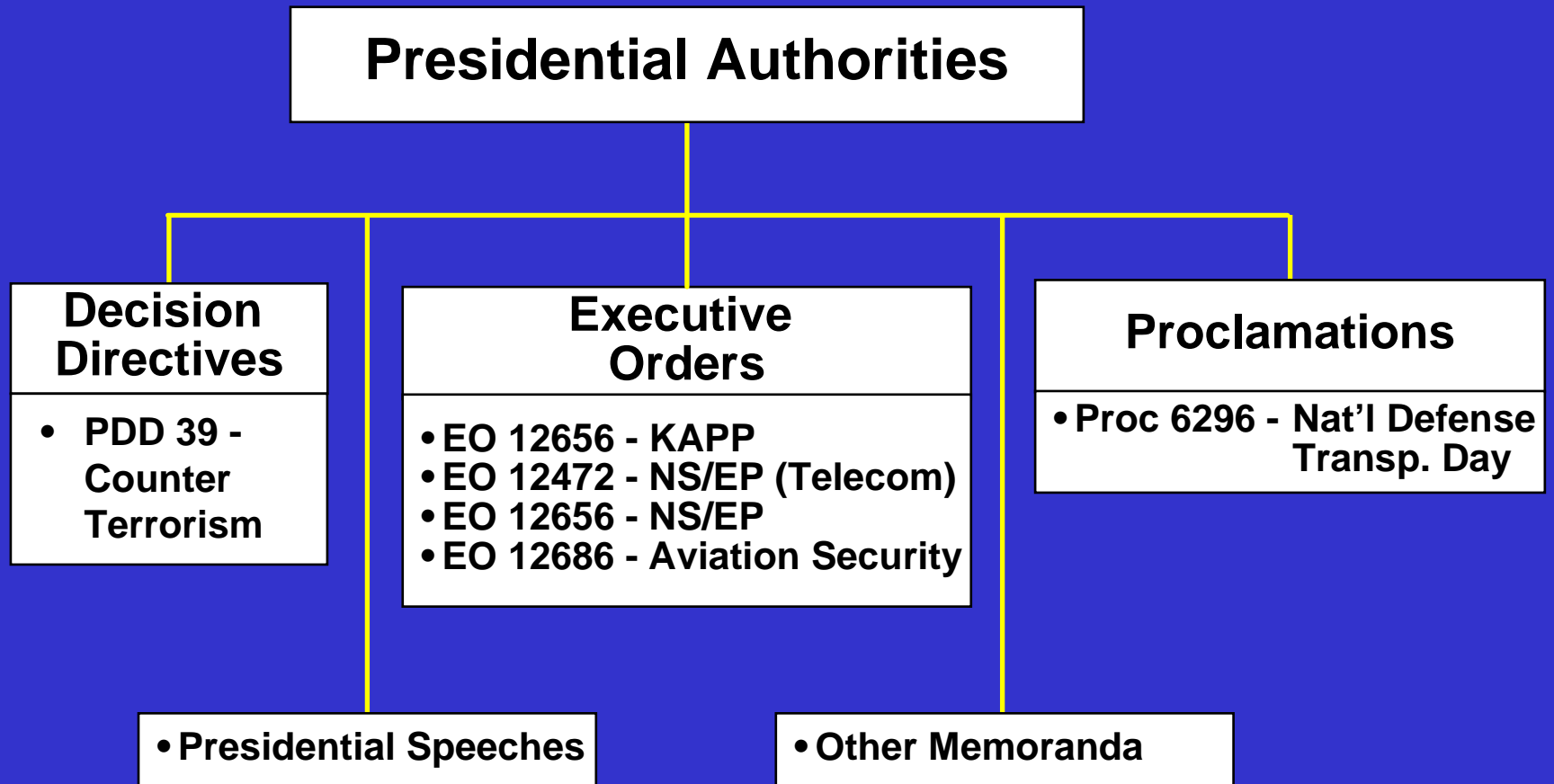
Round I



Round II



II. Example of Legal Landscape: Physical Distribution Infrastructure



II. Example of Legal Landscape: Physical Distribution Infrastructure

Legislative Authorities

Pipeline Safety

- RSPA (OPS)
Title 49

Infrastructure Investments

- Tax Incentives - Title 26

NS/EP

- Stafford Act - Title 42
- MARAD - 46, 50 App. USC

Transportation

- DOT Jurisdiction - Title 49
- FAA - FAA Act - Title 49
- FHWA - Title 23
- NTSB

Crimes

- Criminal Proc. - Title 18
- Burdens of Proof
- Grants from DOT for
Crime Prevention - Title 49
- Oil Discharge - 33 USC

Transportation Safety

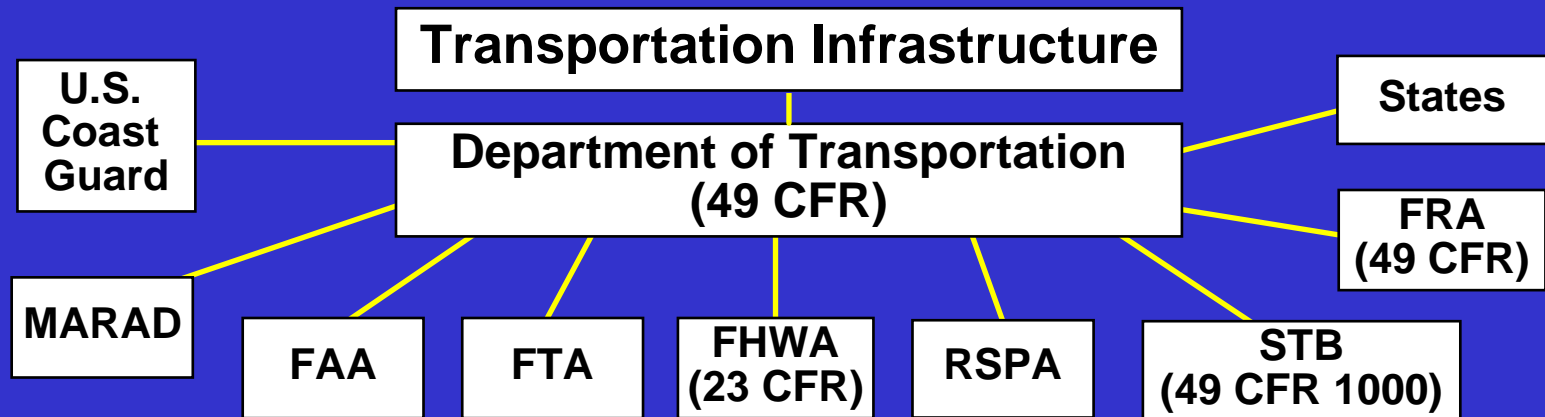
- DOT-OIS: Interagency
- Fed. Railroad Safety
Act - Title 45
- Coast Guard - Title 14
- Inspection - Title 46

- Hearings

- Legislative History

- Resolutions

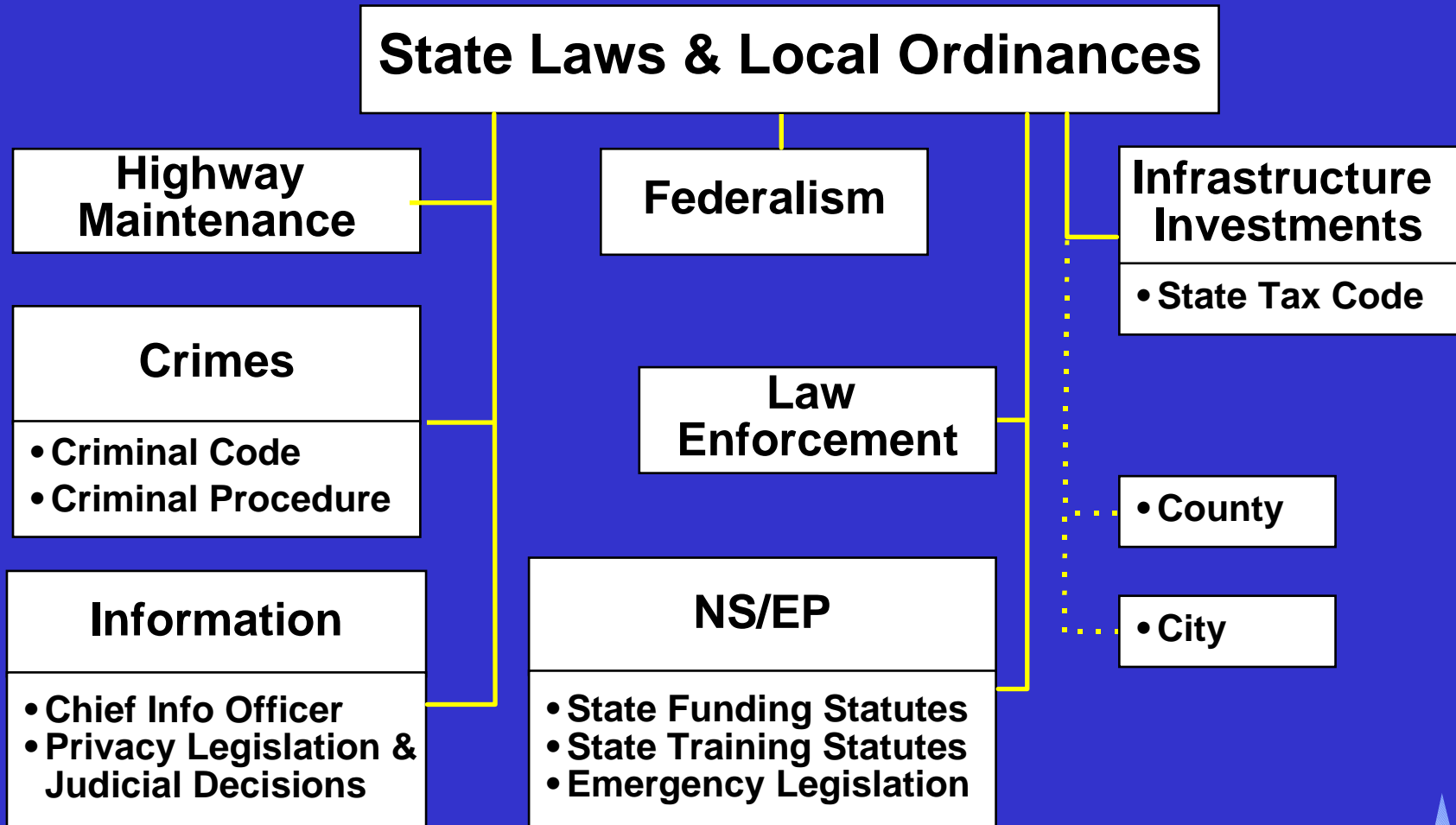
II. Example of Legal Landscape: Physical Distribution Infrastructure



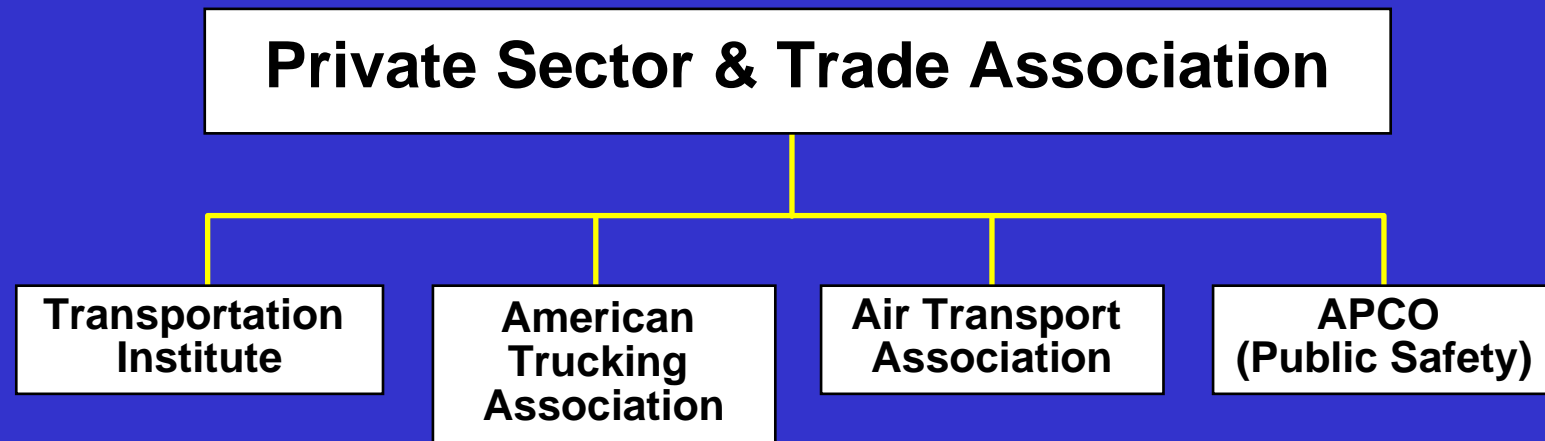
Issues & Authorities

- Codification of Canadian Regulations - 49 CFR 171.14
- Cooperation w/States - 49 CFR
- Emergency Relief (Roads) - 23 CFR
- Coast Guard - 33 CFR
- Railroad Police - 49 CFR 207
- Safety Enforcement - 49 CFR 207
- Safety Jurisdiction - 49 CFR 149
- HAZMATS - 49 CFR 51, 57, 201 - 213
- Radio Standards/Emergency Transmissions - 45 CFR 220.47
- Accidents & Reports - 49 CFR 830
- MARAD - 46 CFR
- National Contingency Plan - 40 CFR

II. Example of Legal Landscape: Physical Distribution Infrastructure



II. Example of Legal Landscape: Physical Distribution Infrastructure





II. “Legal Landscape” & “Regulatory Landscape” Reports

Conclusions from Legal Landscape:

- ◆ Many authorities are in place that can address infrastructure assurance objectives
- ◆ Effectiveness varies across critical infrastructures—whether they have been heavily regulated; and the degree to which they affect interstate commerce
- ◆ Legal authorities are generally in place to address physical threats to infrastructure
- ◆ Legal authorities may require revision or clarification to adequately address new cyber threats



II. “Legal Landscape” and “Regulatory Landscape” Reports

Findings from Regulatory Landscape:

- ◆ Historically, infrastructures differed in the:
 - *Degree* to which they have been regulated;
 - *Reasons* for their having been regulated;
 - Access to service
 - Market power
 - Public safety
 - Infrastructure surety: government as “safety net”
- ◆ Today, because of efforts to open markets & increase competition,
- ◆ They differ in the:
 - *Extent* to which they are being restructured;
 - Telecom: local and long distance providers
 - Natural gas: producers, pipeline & local distribution companies
 - *Rates* at which they are being restructured



II. “Legal Landscape” and “Regulatory Landscape” Reports

Conclusions from the Regulatory Landscape:

- ◆ Few regulatory schemes *directly* address protection against physical attack
 - Exception: Nuclear power plants, airports
 - Visibility and defensibility of target, severity of consequences
- ◆ Most regulatory schemes offer only incidental protection against physical attack
 - Electrical substations fenced and locked
 - Transmission line towers “windproof”
- ◆ “Protection from cyber threats was not found to be addressed among the regulatory systems surveyed”
- ◆ Areas for future study:
 - Information protection
 - Contingency planning
 - Preservation of redundancy
 - Protection from cyber threats



III. Legal Authorities Database: *Origins*

- ◆ “*Legal landscape*”
- ◆ More than just federal agency authorities
 - Federal, state, local, even international authorities
- ◆ Includes “authorities” that influence private sector owners and operators
 - Auditing standards, guidelines, policies, etc.
- ◆ Not just authorities that can be used to *promote* or *enhance* infrastructure assurance, but authorities that may prove *antithetical* to infrastructure assurance objectives



III. Legal Authorities Database: *Contents*

- ◆ Presidential — EOs, PDD/NSDDs, Proclamations
- ◆ Congressional — Statutes, Legislative History
- ◆ Agencies — Regulations, Circulars, Intra-MOUs
- ◆ Advisory Committees — Issuances & Directives
- ◆ States — Statutes, Programs, Case Law
- ◆ International — Treaties, Foreign Country Laws
- ◆ Trade Association — Recommendations, Standards
- ◆ Private Sector — Publicly Available Documents



III. Legal Authorities Database: *Key Words & Concepts*

- ◆ Indications & Warnings
- ◆ Information Sharing
- ◆ Education & Awareness
- ◆ Information Security
- ◆ Emergency Response
- ◆ Incentives
- ◆ Criminal Sanctions
- ◆ Risk Management
- ◆ Mitigation



III. Legal Authorities Database: *Sample Database Search*

What laws address cyber threats to the nation's securities/commodities exchanges?

- ◆ Title 18 Criminal Legislation: Substantive and Procedural Rules
- ◆ SEC Regulations
- ◆ All 50 States' Computer Crimes Laws
- ◆ NYSE, AMEX, NASDAQ Floor Rules
- ◆ CBOT/CBOE Rules & Regulations

Data Edit Screen

Current as of date

Title NASD Regulation And New York Stock Exchange Memorandum Discusses Sweep - Report And Provides

Relevancy:

August 1997

Citation NASD NOTICE TO MEMBERS 97-19

3

Summary of Citation

NASD Regulation And New York Stock Exchange Memorandum Discusses Sweep - Report And Provides Guidance On Heightened Supervision Recommendations.

Excerpt of Relevent text

NASD NOTICE TO MEMBERS 97-19

NASD Regulation And New York Stock Exchange Memorandum Discusses "Sweeping" Report And Provides Guidance On Heightened Supervision Recommendations.

The findings and recommendations of the Sweep Report suggest that ordinary supervisory procedures may not be sufficient to ensure compliance with federal securities laws and SRO <rules> by newly hired registered representatives with a history of repeated customer complaints, disciplinary actions, or

Related Citations

The findings and recommendations of the Sweep Report suggest that ordinary supervisory procedures may not be sufficient to ensure compliance with federal securities laws and SRO <rules> by newly hired registered representatives with a history of repeated customer complaints, disciplinary actions, or arbitrations or registered representatives who develop such a

- Telecommunications
- Electrical Power Systems
- Continuity of Government Operations
- Gas and Oil Storage and Transportation
- Banking and Finance
- Transportation
- Water Supply systems
- Emergency Services (Medical, Fire, Police)

Jurisdiction and Information Assurance:

SEC has jurisdiction over NASD activities. Refer to SEC Regulations.

Comments

Point of Contact

Questions concerning this Notice may be directed to Mary Revell, Assistant General

Counsel, NASD Regulation, at (202) 728-8203.

Questions about the Sweep should be directed to Daniel M. Sibears, Vice President,

Members Regulation, NASD Regulation, at (202) 728-6911.

Exit

Screen Image of
Legal Authorities
Database



IV. Legal Research Relating to Commission Recommendations

- ◆ Explore adequacy of existing authorities in light of physical and cyber threats to and vulnerabilities of critical infrastructures
 - Adequacy of major federal legislation
 - The Defense Production Act of 1950
 - The Stafford Act/Federal Response Plan
 - The War Powers Resolution
 - Information Security Authorities of the Federal Government
 - NIST/NSA: Computer Security Act of 1987
 - OMB: OMB Circular A-130
 - Nunn-Lugar-Domenici Funding Authorities
 - Adequacy of criminal law
 - Substantive (incl. sentencing) and procedural
 - Physical and “cyber”



IV. Legal Research Relating to Commission Recommendations

- ◆ Potential legal *impediments* to achieving infrastructure assurance objectives
 - Legal impediments to information sharing
 - *Antitrust*—to what extent do the antitrust laws inhibit private sector sharing of threat and vulnerability information?
 - *Liability*—to what extent might the government be liable for participation in a threat warning function?
 - *National security*—To what extent should the U.S. share vulnerability or threat warning information with foreign corporations or multinationals? Are current policies adequate?
 - *Classified & proprietary information*—How can an information sharing function benefit from this information without necessitating its compromise?
 - Privacy laws and the employer-employee relationship
 - Criminal history information
 - Credit history information
 - Employment history
 - Polygraph examinations



Legal Landscape: *Conclusion*

- ◆ “Infrastructure assurance” is really about instilling cultural change
 - Encouraging businesses to better manage emerging risk
 - Encouraging government to realign itself to address emerging threats and vulnerabilities
 - Encouraging individuals to practice better systems and information security at home and work

- ◆ We should also seek to promote cultural change within *legal institutions*
 - Federal, state, local, international
 - Raise awareness of infrastructure assurance concerns and objectives
 - Encourage closer examination of existing laws in light of those objectives