



October 16, 2024

Dear Tribal Leader:

On behalf of the U.S. Cybersecurity and Infrastructure Security Agency (CISA), I invite you to participate in a formal consultation on a Notice of Proposed Rulemaking (NPRM) entitled “Cyber Incident Reporting for Critical Infrastructure Act Reporting Requirements.”¹ CISA issued the NPRM on April 4, 2024, pursuant to the Cyber Incident Reporting for Critical Infrastructure Act of 2022 (CIRCIA) which requires CISA to promulgate regulations implementing covered cyber incident and ransom payment reporting requirements for covered entities described in the final rule.² CISA intends to host two consultations, both of which will be held virtually, one on Monday, December 2, 2024, from 2:00 p.m. to 3:00 p.m. Eastern Time and one on Tuesday, December 3, 2024, from 2:00 p.m. to 3:00 p.m. Eastern Time. You may register for the December 2, 2024, consultation by [CLICKING HERE](#) and the December 3, 2024 consultation by [CLICKING HERE](#). We respectfully request that each Tribe register no more than one person to participate in the consultation. All others are welcome to register as listen-only participants.

Background

Enacted on March 15, 2022, CIRCIA requires covered entities to report to CISA within certain prescribed timeframes any covered cyber incidents, ransom payments made in response to a ransomware attack, and any substantial new or different information discovered that is related to a previously submitted report. Among other benefits, these new cyber incident reporting requirements will enhance CISA’s ability to conduct cybersecurity trend and threat analysis; assess cybersecurity vulnerability and mitigation measures; provide early warnings to cyber defenders via the rapid sharing of information on cyber threats, vulnerabilities, and countermeasures through the issuance of cybersecurity alerts or other means; support cyber incident response and mitigation; disrupt cyber threat actors; and advance the nation’s cyber resiliency. CIRCIA requires the Director of CISA to implement these new reporting requirements through rulemaking by issuing an NPRM no later than 24 months after the date of the enactment of the statute and a final rule within 18 months of publication of the NPRM.

On April 4, 2024, CISA published an NPRM and solicited public comment on proposed CIRCIA reporting requirements. The NPRM proposed that any covered entity that experiences a covered cyber incident must report that incident to CISA within 72 hours of establishing a reasonable belief that the incident occurred. The NPRM also proposed that any covered entity that makes a ransom payment must report that payment to CISA within 24 hours of making the

¹ 89 Fed. Reg. 23,644 (Apr. 4, 2024).

² See 6 U.S.C. § 681b.

payment. Additionally, the NPRM provides that a covered entity is any entity that meets one or more of the proposed applicability criteria contained in proposed Section 226.2 which potentially includes some Tribal governments or entities owned by Tribal governments that meet the criteria. Proposed Section 226.14 exempts Tribal governments, along with state, local, and territorial governments, from certain enforcement mechanisms that CISA is otherwise authorized to pursue against covered entities that have failed to comply with their regulatory reporting obligations.

Consultation

Executive Order (EO) 13175, “Consultation and Coordination with Indian Tribal Governments,”³ and Department of Homeland Security (DHS) Directive 071-04, “Consultation and Coordination with Tribal Nations,”⁴ require DHS components to have an accountable process to engage Tribal governments and offer Tribal officials an opportunity to provide meaningful and timely input into the development of regulatory policies that have Tribal implications. EO 13175 defines “[p]olicies that have tribal implications” as “regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.”⁵

As part of the development of the NPRM, CISA considered whether the proposed rule would have a substantial direct effect on Indian Tribes. CISA’s initial analysis indicated that the proposed rule would not have a substantial direct effect on Indian Tribes and that consultation was not required because “Congress explicitly prohibited CISA from pursuing enforcement against a tribal government for failure to report a Covered Cyber Incident or Ransom Payment as otherwise required under the statute’s implementing regulations.”⁶ Accordingly, CISA did not pursue Tribal consultation prior to issuance of the NPRM.

During the open comment period for the NPRM, CISA received several comments⁷ from Tribal governments and other entities stating that CISA’s initial analysis that the proposed rule has no Tribal implications was incorrect. CISA considered these comments and believes that they raise reasonable questions regarding the potential impact of the proposed rule on Tribal governments. Accordingly, CISA will host a Tribal consultation consistent with the spirit and letter of EO 13175 and DHS Directive 071-04.

³ 65 Fed. Reg. 67,249 (Nov. 6, 2000).

⁴ DHS Directive Number 071-04 (Dec. 15, 2022).

⁵ *Supra* note 3 at 67,249.

⁶ See 6 U.S.C. § 681d(f); *see also* 89 Fed. Reg. 23,765 (Apr. 4, 2024).

⁷ See Comments submitted by [Federated Indians of Graton, CISA-2022-0010-0243](#); [Bristol Bay Native Corporation; CISA-2022-0010-0371](#); [Cherokee Nation; CISA-2022-0010-0373](#); [Nisqually Red Wind Casino; CISA-2022-0010-0375](#); [Tribal ISAC; CISA-2022-0010-0376](#); [Yocha Dehe Wintun Nation; CISA-2022-0010-0379](#); [Sycuan Band of the Kumeyaay Nation; CISA-2022-0010-0383](#); [Yuhaaviatam of San Manuel Nation; CISA-2022-0010-0390](#); [Morongo Band of Mission Indians; CISA-2022-0010-0423](#); [Baker Hostetler; CISA-2022-0010-0457](#).

Topics for Consultation

CISA requests the assistance of Tribal leaders, or designated representatives with authority to act on their behalf, in addressing the following topics:

1. The NPRM proposes various criteria through which an entity may be classified as a covered entity subject to the CIRCIA reporting requirements. Under what, if any, criteria are Tribal governments likely to qualify as a covered entity in Section 226.2 of the proposed rule? What types of Tribal governmental entities might qualify as a covered entity and what relationship do these entities have to a Tribal government?
2. What comments or recommendations do you have regarding the proposed definition of covered entity (Section 226.1) and the applicability section (Section 226.2) of the proposed rule as they apply to Tribal government entities?
3. Section 226.16 of the proposed rule would require the Director to refer all circumstances concerning a covered entity's noncompliance that may warrant suspension and debarment action to the DHS Suspension and Debarment Official. What comments or recommendations do you have regarding that section of the proposed rule and its applicability to Tribal governments? How are similar Federal suspension and debarment provisions applied to Tribal governments?
4. Section 226.17 of the proposed rule would allow the Director to refer information concerning a covered entity's noncompliance with the reporting requirements proposed in the NPRM that pertain to performance under a Federal procurement contract to the cognizant contracting official or the Attorney General for civil or criminal enforcement. What comments or recommendations do you have regarding that section of the proposed rule and its applicability to Tribal governments? How would this aspect of the proposed rule change the requirements under which Tribal governments are currently operating pursuant to any Federal contract, financial assistance agreement, loan, or other Federal agreement or transaction?
5. Do you have any comments or recommendations regarding any other aspect of the proposed rule as it relates to Tribal governments?

In addition to receiving comments on the above topics during the two scheduled Tribal consultations, CISA will accept written or electronic comments from Tribal governments received by January 17, 2025, at 11:59 p.m. Alaska Time. Comments should be sent to CIRCIATribalConsultation@mail.cisa.dhs.gov. All comments received by CISA, along with transcripts of the Tribal consultations, will be posted to the rulemaking docket for CIRCIA and made available to the public on www.regulations.gov.

We hope that you will be able to join us for this important discussion and value your participation.

Sincerely,

A handwritten signature in black ink, appearing to read "Nitin Natarajan". The signature is fluid and cursive, with the first name "Nitin" and last name "Natarajan" clearly distinguishable.

Nitin Natarajan
Deputy Director
Cybersecurity and Infrastructure Security Agency