



USET

SOVEREIGNTY PROTECTION FUND

Washington, DC Office
1730 Rhode Island Ave., NW, Suite 406
Washington, DC 20036

Nashville, TN Office
711 Stewarts Ferry Pike, Suite 100
Nashville, TN 37214
P: 615-872-7900 | F: 615-872-7417

Transmitted Electronically

To CIRCIATribalConsultation@mail.cisa.dhs.gov

January 15, 2025

Nitin Natarajan
Deputy Director
Cybersecurity and Infrastructure Security Agency
Department of Homeland Security
500 C St. SW
Washington, DC 20472

Dear Deputy Director Natarajan,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments to the Department of Homeland Security (DHS), Cybersecurity and Infrastructure Security Agency (CISA), on its Notice of Proposed Rulemaking (NPRM) of the Cyber Incident Reporting for Critical Infrastructure Act Reporting Requirements (CIRCI Reporting Requirements). Enacted in 2022, CIRCI requires CISA to promulgate regulations that implement covered cyber incident and ransom payment reporting requirements for covered entities. We appreciate CISA's efforts to consult with Tribal Nations on the NPRM on December 2, and December 3, 2024. While USET SPF agrees that cybersecurity and ransomware strikes are extremely important issues that must be addressed for the protection of critical infrastructure and financial and personal information, there is confusion regarding how the CIRCI Reporting Requirements apply to Tribal Nations. The NPRM as currently drafted is lengthy and broadly applies to state, local, Tribal, and territorial (SLTT) government entities, yet indicates that CIRCI Reporting Requirements do not entirely apply to all Tribal government entities. This requires CISA to provide additional Tribal-specific clarity on how—if at all—the CIRCI Reporting Requirements would apply to Tribal government entities, if the NPRM is finalized.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe—Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mi'kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Because there is Strength in Unity

Clarification Required on How CIRCIA Reporting Requirements Apply to Tribal Government Entities

During the Tribal consultations held in December 2024, several concerns were raised on how the CIRCIA Reporting Requirements would apply to Tribal Nations. Specifically, these concerns focused on the proposed Sec. 226.2, “Applicability”, which includes reference to Tribal government entities operating critical infrastructure for a jurisdiction with a population equal to or greater than 50,000 individuals. However, does jurisdiction simply apply to the jurisdictional boundaries of our Tribal Nations, or could it be interpreted as “service area” since many Tribal Nations across the country have negotiated cross-jurisdictional agreements for first responder activities? While the NPRM states that the CIRCIA Reporting Requirements would apply to SLTT government entities, it remains unclear how this could be interpreted by these government entities as well as DHS personnel.

In addition, CISA staff also referenced Sec. 226.14(a), “Request for information and subpoena procedures”, which states, “*In general*. This section applies to covered entities, except a covered entity that qualifies as a State, Local, Tribal, or Territorial Government entity as defined in § 226.1.” The language under Sec. 226.1 does not define SLTT government entities. Rather Sec. 226.1 references back to Sec. 226.2, which, as aforementioned, states that the “Applicability” of the proposed CIRCIA Reporting Requirements includes Tribal government entities operating critical infrastructure for a jurisdiction with a population equal to or greater than 50,000. As evidenced by these sections of the NPRM alone, it creates confusion on how the CIRCIA Reporting Requirements apply to Tribal government entities, especially regarding the different aspects of the CIRCIA Reporting Requirements (e.g., required reporting on covered cyber incidents and ransom payments, CIRCIA Report submission deadlines, required information for CIRCIA Reports, third party reporting procedures and requirements, etc.). Further, Sec. III of the NPRM outlines the subpoena authority of CISA for failure of SLTT government entities to respond to CISA Requests for Information (RFIs). This includes failure of SLTT government entities to respond within 72 hours of issuance of a CISA RFI, thereby directing CISA to issue a subpoena to the covered entity to compel disclosure of the requested information. USET SPF strongly recommends confirmation that all Tribal Nations are exempt from this authority in the CIRCIA Reporting Requirements.

Adding further confusion regarding the applicability of the CIRCIA Reporting Requirements, Sec. J, “Indian Tribal Governments” of the NPRM, CISA states that:

“This rule does not have “tribal implications” under [Executive Order 13175](#), Consultation and Coordination With Indian Tribal Governments...because it does not 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.”

CISA further states that:

“As with State and local governments, this proposed rule describes ‘covered entity,’ to include tribal government entities and entities like emergency service providers that may be considered part of a tribal government. The requirement to file a CIRCIA Report, however, is not a substantial direct effect under [Executive Order 13175](#). Further, 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 [emphasis added]... Accordingly, CISA believes that this rule does not have tribal implications, and therefore Executive Order 13175 requires no further agency action or analysis.”

Due to the several references throughout the NPRM regarding how CISA Reporting Requirements apply to Tribal government entities, there needs to be further clarification regarding how exactly these Reporting

Requirements apply to us. Indeed, during the December 2024 consultations, one Tribal commenter stated that Tribal government entities should just be removed entirely from the NPRM. This action could be pursued by CISA, especially since the agency specifically stated under Sec. J of the NPRM that, “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.” In addition, this action would also comply with Sec. 6 of Executive Order 13175, which directs federal agencies to increase flexibility for Tribal Nations to receive waivers of statutory and regulatory requirements. However, USET SPF reminds CISA that exempting Tribal Nations from CIRCIA Reporting Requirements should not absolve CISA from upholding its trust and treaty obligations to support Tribal Nations in the event such support is requested in the event of a cybersecurity breach or ransomware event affecting our government entities. CISA must be clear with Tribal Nations in providing a point-of-contact for Tribal Nations in the event of cybersecurity and ransomware events.

Support for Exemption from Disclosure Under FOIA for Tribal Government Entities

While there exists much confusion regarding the applicability of the CIRCIA Reporting Requirements for Tribal government entities, USET SPF strongly agrees with a proposed exemption from disclosure under FOIA mentioned in the NPRM. Specifically, Sec. H(i)(2)(b), “Exemption from Disclosure Under FOIA”, states that CIRCIA Reports and RFIs submitted in compliance with CIRCIA regulations are exempt from disclosure under Sec. 552(b)(3) of the Freedom of Information Act (FOIA). Sec. H further states that in the event CISA receives a FOIA request or RFI for a CIRCIA Report the exemption from disclosure would also apply to those received from a third-party submitter. USET SPF fully supports the proposed Sec. H(i)(2)(b) to protect sensitive Tribal government data from being obtained from a FOIA request. USET SPF asserts that this proposed section of the NPRM, if finalized, should fully apply to Tribal government entities that willfully participate in CIRCIA Reporting regulations.

Conclusion

The threat of ransomware strikes and the infiltration or bypassing of cybersecurity infrastructure is becoming an increasingly common issue across all governments. USET SPF understands that the CIRCIA Reporting Requirements are intended to protect critical infrastructure from these attacks by ensuring reporting accountability within certain timeframes to respond to and mitigate such efforts on critical infrastructure, the financial market, and for the protection of sensitive information. However, it remains unclear how these Reporting Requirements apply to, or would be enforced on, Tribal Nations. For these reasons, USET SPF strongly recommends that CISA clarify that Tribal government entities can be willful participants in the CIRCIA Reporting Requirements, but also that we are fully exempt from any penalty or subpoena enforcement for compliance failure. We look forward to continued dialogue on these important issues. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,



Chief Kirk Francis
President



Kitcki A. Carroll
Executive Director