July 1, 2024

Jennie M. Easterly
Director, Cybersecurity and Infrastructure Security Agency
Department of Homeland Security

Re: Docket No. CISA–2022–0010, Cyber Incident Reporting for Critical Infrastructure Act Reporting Requirements

Dear Director Easterly,

The undersigned organizations appreciate the opportunity to provide comments to the Cybersecurity and Infrastructure Security Agency ("CISA") of the Department of Homeland Security ("DHS" or "the Department") in response to its proposed rule to implement the requirements of the Cybersecurity Incident Reporting for Critical Infrastructure Act ("CIRCIA's") requirements.[1]

While several of the undersigned organizations will be providing comments to CISA on behalf of our members, we are writing today to seek clarification that trade associations like ours would not be considered "covered entities" that are required to report cyber incidents to CISA under the proposed rule. We believe such a clarification is necessary given the breadth of the language used in the proposed rule and its explanatory memorandum.

The proposed rule's definition of covered entity includes "any person, partnership, business, association, corporation, or other organization" that operates "in a critical infrastructure sector." We are concerned that this broad definition, combined with the inclusion of "association" in the list of entity types, could be misconstrued to ensnare associations like ours that serve members within critical infrastructure sectors but which do not own or operate any critical infrastructure.

The statutory text of CIRCIA limits CISA's ability to define a covered entity by referencing Presidential Policy Directive 21 ("PPD-21"), which takes a "systems and assets approach" to identify entities that actually own or operate critical infrastructure. However, the proposed rule appears to explicitly reject the "systems and assets approach" of PPD-21, claiming that it "does not fit within the regulatory scheme required by CIRCIA"—despite the reference to PPD-21 within the text of CIRCIA itself. We are therefore concerned that CISA's "broad" approach to the definition of "covered entity" could affect trade associations that do not own or operate critical infrastructure and that Congress never intended to subject to CIRCIA's reporting regime. At the very least, the language in the proposed rule would create significant confusion if it were finalized, so we seek clarity from CISA in the final rule that trade associations would not fall under its scope.

The original sponsor of CIRCIA, Rep. Yvette Clarke (D-NY), made clear that the "consensus" among its authors was that the implementation of CIRCIA would "benefit from a well-scoped incident reporting framework," and that Congress "[did] not expect all critical infrastructure owners and operators to be subject to [CIRCIA's] reporting requirement." Clearly, if Congress intended to

[1] Federal Register Vol. 89, No. 66, Thursday, April 4, 2024, available at https://www.govinfo.gov/content/pkg/FR-2024-04-04/pdf/2024-06526.pdf

exempt even some critical infrastructure owners and operators from CIRCIA, then entities that neither own nor operate critical infrastructure should certainly be exempt.[2]

As trade associations representing our members, we take pride in our efforts to protect our information systems and networks from cyber intrusions. But, given that our work on behalf of our members, such as policy advocacy and industry programming, does not include the ownership or operation of critical infrastructure systems or assets, any potential cybersecurity incidents would not implicate homeland security and thus are irrelevant to CISA's statutory mandate under CIRCIA. Subjecting trade associations to CIRCIA's reporting requirements thus would be a clear violation both of congressional intent and of the plain language of the statute.

If CISA were to extra-statutorily define trade associations as covered entities, we also are concerned that it would create a disincentive for trade associations to participate in the public-private partnerships that are the hallmark of homeland security sector risk management. The explanatory memorandum states that "some entities that do not own or operate systems or assets that meet the definition of critical infrastructure in PPD-21 but are active participants in critical infrastructure sectors and communities, are considered 'in a critical infrastructure sector.'"[3] As a result, CISA has proposed "to include an equivalently wide variety of types of entities within the scope of the CIRCIA regulatory description of 'covered entity.'".[4] Subjecting trade associations to regulatory obligations because of their voluntary participation in collaborative efforts to enhance cybersecurity would subvert these vital public-private partnerships and ultimately harm industry participants' work to protect homeland security.

We respectfully encourage CISA to clarify that covered entities are *only* those that own or operate critical infrastructure systems or assets. We look forward to working with CISA to ensure that cyber incident reporting requirements are effectively tailored to provide relevant information necessary to protect homeland security.

Sincerely,

Agricultural Retailers Association
Alliance for Automotive Innovation
Alliance for Chemical Distribution
American Cleaning Institute
American Foundry Society
American Lighting Association
American Mold Builders Association
American Society of Association Executives
Association of Home Appliance Manufacturers
Association of the Nonwoven Fabrics Industry

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[2] Remarks by Rep. Yvette Clark, hearing on "Surveying CIRCIA: Sector Perspectives on the Notice of Proposed Rulemaking," Subcommittee on Cybersecurity and Infrastructure Protection, Committee on Homeland Security, U.S. House of Representatives, May 1, 2024, available at https://homeland.house.gov/hearing/surveying-circia-sector-perspectives-on-the-notice-of-proposed-rulemaking/

[3] Op. cit., p. 23676.

[4] Op. cit., p. 23677.

Baking Equipment Manufacturers and Allieds
Battery Council International
Can Manufacturers Institute
Consumer Technology Association
Edison Electric Institute
Electric Power Supply Association
Electronic Components Industry Association
FMI - The Food Industry Association
Forging Industry Association
Global Steel Climate Council
Independent Lubricant Manufacturers Association
Industrial Fasteners Institute
Industrial Packaging Alliance of North America
Industrial Truck Association
Information Technology Industry Council
Institute of Makers of Explosives
International Sign Association
Metals Service Center Institute
National Association of Manufacturers
National Electrical Manufacturers Association
National Mining Association
National Propane Gas Association
National Retail Federation
National Tooling and Machining Association
National Wooden Pallet & Container Association
Non-Ferrous Founders' Society
North American Association of Food Equipment Manufacturers
North American Die Casting Association
Plastic Pipe and Fittings Association
Plumbing Manufacturers International
Precision Metalforming Association
PRINTING United Alliance
SEMI
Society of Chemical Manufacturers & Affiliates
STI/SPFA
Telecommunications Industry Association
Textile Care Allied Trades Association
Textile Rental Services Association of America
The American Public Power Association
The Chlorine Institute
The Sulphur Institute