Monday Morning Briefing

October 11, 2021

Senate panel advances cyber incident reporting bill

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Last week the Senate Homeland Security and Governmental Affairs Committee approved (https://www.hsgac.senate.gov/media/majority-media/peters-and-portman-bipartisan-bills-strengthening-public-and-private-sector-cybersecurity-advance-in-senate) bipartisan legislation offered by the panel's leaders that would require critical infrastructure owners and operators to report to the Cybersecurity and Infrastructure Security Agency (CISA) following a significant cyberattack. The Senate measure is similar to a House bill (https://www.amwa.net/article/lawmakers-push-cyber-incident-reporting-standards) that was recently added to larger defense policy legislation.

The Senate's Cyber Incident Reporting Act (S. 2875 (https://www.hsgac.senate.gov/imo/media/doc/210928_PetersPortmanCyberIncidentReportingAct_AsIntroduced.pdf)) would require covered critical infrastructure owners and operators to report to CISA within 72 hours of a reasonable belief that they have experienced a cyberattack. Covered entities also would have to report to CISA within 24 hours of making a ransom payment and consider alternative options before paying. Other parts of the bill would limit how information contained within reports could be used and would allow CISA to subpoena information about cyberattacks that are not reported pursuant to the legislation.

Like the similar House measure, S. 2875 does not specifically reference water systems as critical infrastructure entities that would be subject to the reporting requirements. Instead, the bill would charge CISA with defining which critical infrastructure entities are covered by the reporting rules. It is, therefore, likely that at least some major drinking water systems would be covered, particularly if there is a belief that a successful cyberattack against them could lead to significant public health or economic consequences.

The sponsors of S. 2875 are expected to offer the measure as an amendment to a forthcoming Senate defense policy bill, just as the House version of the bill was added to the House's defense measure. In the meantime, AMWA last week joined a coalition led by the U.S. Chamber of Commerce in writing (https://www.amwa.net/letter/letter-cyber-incident-reporting-legislation) to Congress to outline priorities for cyber incident reporting legislation. These included establishing a reporting timeline of not less than 72 hours, enacting strong liability protections for victims of cyberattacks, restricting the use of reported data, and allowing sector information sharing and analysis organizations to submit incident reports on behalf of attack victims.

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