

117TH CONGRESS
1ST SESSION

H. R. 5491

To authorize the Director of the Cybersecurity and Infrastructure Security Agency to designate certain elements of critical infrastructure as systemically important, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 5, 2021

Mr. KATKO (for himself, Ms. SPANBERGER, and Mr. GARBARINO) introduced the following bill; which was referred to the Committee on Homeland Security

A BILL

To authorize the Director of the Cybersecurity and Infrastructure Security Agency to designate certain elements of critical infrastructure as systemically important, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Securing Systemically
5 Important Critical Infrastructure Act”.

1 **SEC. 2. DESIGNATION OF SYSTEMICALLY IMPORTANT CRIT-**
2 **ICAL INFRASTRUCTURE.**

3 (a) TITLE XXII TECHNICAL AND CLERICAL AMEND-
4 MENTS.—

5 (1) TECHNICAL AMENDMENTS.—

6 (A) HOMELAND SECURITY ACT OF 2002.—

7 Subtitle A of title XXII of the Homeland Secu-
8 rity Act of 2002 (6 U.S.C. 651 et seq.) is
9 amended—

10 (i) in section 2202 (6 U.S.C. 652)—

11 (I) in paragraph (11), by striking
12 “and” after the semicolon;

13 (II) in the first paragraph (12)
14 (relating to appointment of a Cyberse-
15 curity State Coordinator) by striking
16 “as described in section 2215; and”
17 and inserting “as described in section
18 2217;”;

19 (III) by redesignating the second
20 paragraph (12) (relating to the .gov
21 internet domain) as paragraph (13);
22 and

23 (IV) by redesignating the third
24 paragraph (12) (relating to carrying
25 out such other duties and responsibil-
26 ities) as paragraph (14);

1 (ii) in the first section 2215 (6 U.S.C.
2 665; relating to the duties and authorities
3 relating to .gov internet domain), by
4 amending the section enumerator and
5 heading to read as follows:

6 **“SEC. 2215. DUTIES AND AUTHORITIES RELATING TO .GOV**
7 **INTERNET DOMAIN.”;**

8 (iii) in the second section 2215 (6
9 U.S.C. 665b; relating to the joint cyber
10 planning office), by amending the section
11 enumerator and heading to read as follows:

12 **“SEC. 2216. JOINT CYBER PLANNING OFFICE.”;**

13 (iv) in the third section 2215 (6
14 U.S.C. 665c; relating to the Cybersecurity
15 State Coordinator), by amending the sec-
16 tion enumerator and heading to read as
17 follows:

18 **“SEC. 2217. CYBERSECURITY STATE COORDINATOR.”;**

19 (v) in the fourth section 2215 (6
20 U.S.C. 665d; relating to Sector Risk Man-
21 agement Agencies), by amending the sec-
22 tion enumerator and heading to read as
23 follows:

1 **“SEC. 2218. SECTOR RISK MANAGEMENT AGENCIES.”;**

2 (vi) in section 2216 (6 U.S.C. 665e;
3 relating to the Cybersecurity Advisory
4 Committee), by amending the section enu-
5 merator and heading to read as follows:

6 **“SEC. 2219. CYBERSECURITY ADVISORY COMMITTEE.”;**

7 and

8 (vii) in section 2217 (6 U.S.C. 665f;
9 relating to Cybersecurity Education and
10 Training Programs), by amending the sec-
11 tion enumerator and heading to read as
12 follows:

13 **“SEC. 2220. CYBERSECURITY EDUCATION AND TRAINING**
14 **PROGRAMS.”.**

15 (B) CONSOLIDATED APPROPRIATIONS ACT,
16 2021.—Paragraph (1) of section 904(b) of divi-
17 sion U of the Consolidated Appropriations Act,
18 2021 (Public Law 116–260) is amended, in the
19 matter preceding subparagraph (A), by insert-
20 ing “of 2002” after “Homeland Security Act”.

21 (2) CLERICAL AMENDMENT.—The table of con-
22 tents in section 1(b) of the Homeland Security Act
23 of 2002 is amended by striking the items relating to
24 sections 2214 through 2217 and inserting the fol-
25 lowing new items:

“Sec. 2214. National Asset Database.

“Sec. 2215. Duties and authorities relating to .gov internet domain.

“Sec. 2216. Joint cyber planning office.

“Sec. 2217. Cybersecurity State Coordinator.

“Sec. 2218. Sector Risk Management Agencies.

“Sec. 2219. Cybersecurity Advisory Committee.

“Sec. 2220. Cybersecurity Education and Training Programs.

“Sec. 2220A. Designation of systemically important critical infrastructure.”.

1 (b) DESIGNATION OF SYSTEMICALLY IMPORTANT
2 CRITICAL INFRASTRUCTURE.—Subtitle A of title XXII of
3 the Homeland Security Act of 2002 (6 U.S.C. 651 et seq.)
4 is amended by adding at the end the following new section:
5 **“SEC. 2220A. DESIGNATION OF SYSTEMICALLY IMPORTANT**
6 **CRITICAL INFRASTRUCTURE.**

7 “(a) IN GENERAL.—The Director of the Cybersecu-
8 rity and Infrastructure Security Agency shall designate an
9 element of critical infrastructure as systemically important
10 critical infrastructure if—

11 “(1) the Director makes a preliminary deter-
12 mination pursuant to subsection (d)(1), using the
13 methodology established pursuant to subsection (b),
14 that such element satisfies the criteria established
15 pursuant to subsection (c); and

16 “(2) such preliminary determination becomes a
17 final determination pursuant to subsection (d)(2).

18 “(b) METHODOLOGY.—The Director, in consultation
19 with the heads of Sector Risk Management Agencies and
20 covered stakeholders, shall—

21 “(1) establish a methodology for determining
22 whether an element of critical infrastructure satisfies

1 the criteria established for systemically important
2 critical infrastructure pursuant to subsection (c);
3 and

4 “(2) update such methodology, as necessary.

5 “(c) CRITERIA.—

6 “(1) IN GENERAL.—The Director, in consulta-
7 tion with the heads of Sector Risk Management
8 Agencies and covered stakeholders, shall develop ob-
9 jective criteria to determine whether an element of
10 critical infrastructure should be designated as sys-
11 temically important.

12 “(2) CONSIDERATIONS.—In developing the cri-
13 teria required under paragraph (1), the Director
14 shall consider the following:

15 “(A) The likelihood that a disruption to, or
16 compromise of, such element of critical infra-
17 structure would result in a debilitating effect on
18 national security, economic security, public
19 health or safety, or any combination thereof.

20 “(B) The extent to which damage, disrup-
21 tion, or unauthorized access to such element or
22 collectively to the category of critical infrastruc-
23 ture to which such element belongs—

1 “(i) would disrupt the reliable oper-
2 ation of a category of critical infrastruc-
3 ture; and

4 “(ii) would impede provisioning of a
5 national critical function.

6 “(C) The extent to which increasing the
7 risk management coordination between the Fed-
8 eral Government and the owner or operator of
9 the element would enhance the cybersecurity re-
10 silience of the United States.

11 “(3) UPDATES.—The Director, in consultation
12 with the heads of Sector Risk Management Agencies
13 and covered stakeholders, shall update the criteria
14 established pursuant to paragraph (1), as necessary.

15 “(d) DETERMINATIONS.—

16 “(1) PRELIMINARY DETERMINATION.—In the
17 case of an element of critical infrastructure that the
18 Director determines satisfies the criteria established
19 under subsection (c), the Director shall—

20 “(A) use the methodology under subsection
21 (b) to make a preliminary determination with
22 respect to whether such element is systemically
23 important;

24 “(B) notify the owner or operator of the
25 element of such determination; and

1 “(C) provide such owner or operator with
2 an opportunity to provide additional informa-
3 tion for consideration in the final determination
4 under paragraph (2).

5 “(2) FINAL DETERMINATION.—On the date
6 that is 30 days after the date on which the Director
7 provides notice under paragraph (1)(B) with respect
8 to a preliminary determination, such preliminary de-
9 termination shall become final unless the Director
10 determines, on the basis of additional information,
11 that the element subject to the preliminary deter-
12 mination does not satisfy the criteria under sub-
13 section (c).

14 “(3) PERIODIC REVIEW.—Periodically, the Di-
15 rector shall review a final designation made pursu-
16 ant to paragraph (2) with respect to an element
17 using the same procedures outlined under such para-
18 graph.

19 “(4) PROTECTION OF INFORMATION.—Informa-
20 tion obtained by the Director pursuant to paragraph
21 (1)(C) shall be protected under section 2224 or clas-
22 sified, as determined appropriate by the Director.

23 “(e) LIST OF SYSTEMICALLY IMPORTANT CRITICAL
24 INFRASTRUCTURE.—

1 “(1) IN GENERAL.—Not later than 1 year after
2 the date of the enactment of this section, the Direc-
3 tor, in coordination with the heads of Sector Risk
4 Management Agencies, shall develop a comprehen-
5 sive list that includes any element of critical infra-
6 structure designated as systemically important under
7 this section.

8 “(2) UPDATE OF LIST AND NOTIFICATION TO
9 OWNERS AND OPERATORS.—Not later than 7 days
10 after the date on which the Director makes a final
11 determination pursuant to paragraph (2) or (3) of
12 subsection (d), the Director shall—

13 “(A) update the list required under para-
14 graph (1); and

15 “(B) notify the appropriate owner or oper-
16 ator of the element of critical infrastructure of
17 the addition, modification, or removal of such
18 element from such list.

19 “(3) CONGRESSIONAL NOTIFICATION.—Not
20 later than 30 days after the list is updated pursuant
21 to paragraph (2), the Director shall submit to the
22 appropriate congressional committees such updated
23 list.

24 “(4) LIMITATION ON DISSEMINATION OF
25 LIST.—The Director shall limit the dissemination of

1 the list required under paragraph (1) to individuals
2 who need access to such list to carry out official du-
3 ties or responsibilities.

4 “(f) PRIORITIZATION OF AGENCY RESOURCES.—

5 “(1) IN GENERAL.—The Director shall—

6 “(A) seek to enter into enhanced risk man-
7 agement coordination with the owners and oper-
8 ators of elements of critical infrastructure des-
9 ignated as systemically important under this
10 section; and

11 “(B) in allocating Agency resources to
12 such owners and operators, prioritize owners
13 and operators who coordinate with the Director
14 pursuant to subparagraph (A).

15 “(2) PRIORITIZED REPRESENTATION IN THE
16 OFFICE FOR JOINT CYBER PLANNING.—The head of
17 the office for joint cyber planning established pursu-
18 ant to section 2216, in carrying out the responsibil-
19 ities of such office with respect to relevant cyber de-
20 fense planning, joint cyber operations, cybersecurity
21 exercises, and information-sharing practices, shall,
22 to the extent practicable, prioritize the involvement
23 of owners and operators of elements of critical infra-
24 structure designated as systemically important under
25 this section.

1 “(3) CONTINUOUS MONITORING SERVICES.—

2 The Director shall, to the extent practicable, encour-
3 age the participation of the owners and operators of
4 elements of critical infrastructure designated as sys-
5 temically important pursuant to this section in vol-
6 untary programs to provide technical assistance in
7 the form of continuous monitoring and detection of
8 cybersecurity risks.

9 “(g) REPORTS.—

10 “(1) INITIAL REPORT.—Not later than 180
11 days after the date of the enactment of this section,
12 the Director, in consultation with the heads of Sec-
13 tor Risk Management Agencies and covered stake-
14 holders, shall submit to the appropriate congres-
15 sional committees a report that includes the fol-
16 lowing:

17 “(A) A description of the capabilities of
18 the Agency that exist immediately before the
19 date of the enactment of this section with re-
20 spect to identifying critical infrastructure.

21 “(B) Information relating to the criteria
22 and methodology established pursuant to sub-
23 sections (b) and (c) to identify an element of
24 critical infrastructure as systemically important
25 pursuant to this section.

1 “(C) Information relating to—

2 “(i) the capabilities of the Agency to
3 identify systems, assets, and facilities as
4 systemically important pursuant to this
5 section; and

6 “(ii) any updates relating to the capa-
7 bilities referred to in clause (i).

8 “(D) Information relating to—

9 “(i) the interactions between the
10 Agency, the heads of Sector Risk Manage-
11 ment Agencies, and covered stakeholders
12 with respect to carrying out this section,
13 including processes used for incorporation
14 of industry feedback and any associated
15 challenges;

16 “(ii) critical infrastructure identifica-
17 tion programs within the Department and
18 how such programs are being incorporated
19 into the process to identify such infrastruc-
20 ture, including—

21 “(I) section 9 of Executive Order
22 13636;

23 “(II) the National Asset Data-
24 base established under section 2214;
25 and

1 “(III) section 4 of Executive
2 Order 14028;

3 “(iii) any identified gaps in authori-
4 ties or any additional resources required to
5 carry out this section, including necessary
6 legislation;

7 “(iv) any resources the Agency is au-
8 thorized to provide to the owners and oper-
9 ators of an element of critical infrastruc-
10 ture designated as systemically important
11 pursuant to this section; and

12 “(v) opportunities for enhanced risk
13 management coordination between the
14 Federal Government and the owners and
15 operators of an element of critical infra-
16 structure designated as systemically impor-
17 tant pursuant to this section.

18 “(2) SUBSEQUENT REPORTS.—Not later than 2
19 years after the date on which the initial report is
20 submitted pursuant to paragraph (1), and once
21 every 2 years thereafter for 10 years, the Director,
22 in consultation with the heads of Sector Risk Man-
23 agement Agencies and covered stakeholders, shall
24 submit to the appropriate congressional committees
25 a report that includes the updated information re-

1 quired under subparagraphs (B) through (D) of
2 paragraph (1).

3 “(3) FORM.—Each of the reports required
4 under paragraphs (1) and (2) shall be submitted in
5 unclassified form, but may contain a classified
6 annex.

7 “(h) RESTRICTION.—Subchapter I of chapter 35 of
8 title 44, United States Code, shall not apply to any action
9 by the Director to implement this section.

10 “(i) COVERED STAKEHOLDERS DESCRIBED.—In this
11 section, the term ‘covered stakeholders’ means individuals
12 identified by the Director. Such individuals shall include—

13 “(1) representatives from the Critical Infra-
14 structure Partnership Advisory Council, established
15 pursuant to section 871;

16 “(2) representatives from the Cybersecurity Ad-
17 visory Committee established under section 2219;

18 “(3) individuals representing critical infrastruc-
19 ture industries, the elements of which are subject to,
20 or likely to be subject to, a preliminary determina-
21 tion under subsection (d)(1);

22 “(4) representatives from trade organizations
23 whose memberships include a concentration of own-
24 ers and operators of critical infrastructure indus-
25 tries, the elements of which are subject to, or likely

1 to be subject to, a preliminary determination under
2 subsection (d)(1); and

3 “(5) any other individual determined appro-
4 priate by the Director.

5 “(j) DEFINITIONS.—In this section:

6 “(1) APPROPRIATE CONGRESSIONAL COMMIT-
7 TEES.—The term ‘appropriate congressional com-
8 mittees’ means—

9 “(A) the Committee on Homeland Security
10 of the House of Representatives; and

11 “(B) the Committee on Homeland Security
12 and Governmental Affairs of the Senate.

13 “(2) NATIONAL CRITICAL FUNCTION.—The
14 term ‘national critical function’ means a function of
15 the Federal Government or a United States private
16 sector entity, as determined by the Director, that the
17 disruption, corruption, or dysfunction of such func-
18 tion would have a debilitating effect on security, na-
19 tional economic security, national public health or
20 safety, or any combination thereof.”.

21 (c) ASSESSMENT OF RISK MANAGEMENT COORDINA-
22 TION.—

23 (1) IN GENERAL.—Not later than 120 days
24 after the date of the enactment of this Act, the Di-
25 rector, in consultation with the heads of Sector Risk

1 Management Agencies and covered stakeholders,
2 shall conduct an assessment of potential processes
3 for, and benefits of, enhanced risk management co-
4 ordination between the Federal Government and the
5 owners and operators of elements of critical infra-
6 structure designated as systemically important pur-
7 suant to section 2220A of the Homeland Security
8 Act of 2002, as added by subsection (b) of this Act.

9 (2) CONSIDERATION.—The assessment required
10 under paragraph (1) shall include a consideration
11 of—

12 (A) opportunities for enhanced intelligence
13 support and information-sharing;

14 (B) prioritized Federal technical assist-
15 ance;

16 (C) any other process for, or benefit of, en-
17 hanced risk management coordination deter-
18 mined appropriate by the Director; and

19 (D) any additional resources or authoriza-
20 tion required to conduct enhanced risk manage-
21 ment coordination between the Federal Govern-
22 ment and owners and operators of elements of
23 critical infrastructure designated as systemically
24 important pursuant to section 2220A of the
25 Homeland Security Act of 2002, as added by

1 subsection (b) of this Act, including the preven-
2 tion of duplicative requirements for regulated
3 sectors and entities.

4 (3) COVERED STAKEHOLDERS DESCRIBED.—

5 The term “covered stakeholders” has the meaning
6 given such term in section 2220A(i) of the Home-
7 land Security Act of 2002, as added by subsection
8 (b) of this Act.

9 **SEC. 3. PRIORITIZATION OF CLEARANCES FOR SYSTEM-**
10 **ICALLY IMPORTANT CRITICAL INFRASTRUC-**
11 **TURE.**

12 Section 2212 of the Homeland Security Act of 2002
13 (6 U.S.C. 662) is amended by adding at the end the fol-
14 lowing new sentence: “In carrying out this section, the
15 Secretary shall prioritize the applications of owners and
16 operators of elements of critical infrastructure designated
17 as systemically important pursuant to section 2220A.”.

○