



# COMMITTEE ON HOMELAND SECURITY

Ranking Member Bennie G. Thompson

**FOR IMMEDIATE RELEASE**

## **Subcommittee Hearing Statement of Ranking Member Bennie G. Thompson (D-MS)**

### ***Impacts of Emergency Authority Cybersecurity Regulations on the Transportation Sector***

**November 19, 2024**

In November 2001, following the September 11<sup>th</sup> terrorist attacks, Congress passed the *Aviation and Transportation Security Act* to create the Transportation Security Administration and task the agency with securing all modes of transportation.

Congress provided the TSA Administrator broad authority to issue and enforce security measures, including the authority to “issue, rescind, and revise such regulations as are necessary to carry out the functions of the Administration.”

Congress also recognized that threats to transportation would likely evolve faster than regulatory processes could respond, so Congress provided the TSA Administrator with unique authority to bypass the normal rulemaking processes and issue regulations or security directives immediately when necessary.

In fact, statute *requires* that “if the Administrator determines that a regulation or security directive must be issued immediately in order to protect transportation security, the Administrator shall issue the regulation or security directive without providing notice or an opportunity for comment and without prior approval of the Secretary.”

This emergency authority has been *essential* to TSA’s ability to deter, disrupt, and defend against attacks to transportation over the past 23 years.

For example, in August 2006, following the disruption of an al-Qaeda plot to attack transatlantic flights using liquid explosives, TSA used its authority to immediately ban passengers from carrying liquids on flights.

The ban took effect overnight, and TSA issued updated directives in the following days to refine the measures, including to allow limited quantities of liquids.

TSA has similarly issued security directives to respond to intelligence regarding bombs hidden in underwear and personal electronic devices, threats posed by certain powders, plots to hide explosive devices in cargo packages, and public health threats during the COVID-19 pandemic.

When it comes to the cybersecurity of transportation systems, TSA’s emergency authorities are arguably even more necessary.

Cyber threats have evolved extremely quickly over the past several years, and the May 2021 ransomware attack against Colonial Pipeline made clear that the voluntary compliance model TSA had previously applied to cybersecurity was insufficient.

In the aftermath of the attack, based on intelligence indicating continued, evolving cyber threats to various modes of transportation, TSA was able to issue security directives that helped protect transportation systems prior to the issuance of a proposed rulemaking.

TSA's initial cybersecurity requirements were overly stringent and prescriptive—but TSA has worked to refine its approach based on stakeholder feedback.

The same emergency authorities that allowed TSA to take quick action also enabled the agency to fix its mistakes expeditiously.

If TSA had not had the ability to issue security directives immediately, the agency likely would have pursued an overly stringent and prescriptive rulemaking, leading to an even longer period of disruption, all while transportation systems would have been left vulnerable to attack in the interim.

TSA's cybersecurity efforts have matured significantly over a short time period, resulting in the agency's recent proposed rulemaking which is focused on security outcomes rather than prescriptive measures.

Though there is still room for further improvement to be achieved through the notice and comment process, the proposed rulemaking represents a novel, collaborative approach to regulations that should be applauded and encouraged.

Congress should continue to support robust funding for TSA's cybersecurity efforts and promote collaboration between TSA and industry partners—not call into question the critical authorities TSA has leveraged to protect transportation systems.

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