

March 8, 2013



*A bold voice for transportation workers*

Mr. Charles Betts  
Standards and Rulemaking Division,  
Pipeline and Hazardous Materials Safety Administration  
Department of Transportation  
1200 New Jersey Ave., SE  
Washington, DC 20590

**RE: Pipeline and Hazardous Materials Safety Administration  
Docket No. PHMSA-2009-0095 (HM-224F)  
RIN 2137-AE44  
Hazardous Materials: Transportation of Lithium Batteries  
Notice of Proposed Rulemaking; Request for Additional Comment**

Dear Mr. Betts:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I write to comment on the Pipeline and Hazardous Materials Safety Administration's (PHMSA) Notice of Proposed Rulemaking (NPRM)/Request for Additional Comment, which seeks information on whether the agency should require domestic shippers and carriers to comply with the 2013-2014 International Civil Aviation Organization's (ICAO) Technical Instructions. We also express support for the comments filed by the Air Line Pilots Association (ALPA), an affiliate of TTD that represents pilots of cargo and passenger aircraft.<sup>1</sup>

When PHMSA first published its NPRM on the transport of lithium batteries in January 2010, TTD filed comments that supported some provisions of the proposal and called on PHMSA to take further steps to improve the air cargo supply chain. Two years later when PHMSA requested additional comments regarding whether it should harmonize the hazardous materials regulations (HMR) with the 2013-2014 ICAO Technical Instructions, we expressed our support for regulating lithium batteries as dangerous goods and urged the agency to bring the HMR in alignment with the international regulations.

However, when PHMSA issued its final rule in January 2013, it did not harmonize the HMR with the international regulations; rather it incorporated by reference the ICAO standards. As a result, it allowed shippers and carriers to choose between complying with the existing HMR standards and the ICAO Technical Standards. Presently, the agency seeks additional comments by posing a familiar question: should it amend the HMR to reflect the ICAO Technical Instructions in order to require domestic shippers and carriers to comply with the international standards. In response, TTD expresses our firm belief that the agency should fully harmonize the HMR with the ICAO standards and require mandatory compliance with these standards.

---

<sup>1</sup> TTD consists of 33 affiliated unions. A complete list of our affiliates is attached.

**Transportation Trades Department, AFL-CIO**

815 16th Street NW / 4th Floor / Washington DC 20006  
Tel: 202.628.9262 / Fax: 202.628.0391 / [www.ttd.org](http://www.ttd.org)  
Edward Wytkind, President / Larry I. Willis, Secretary-Treasurer



The improved ICAO provisions that took effect January 1, 2013 established new requirements for packages containing more than eight cells or two batteries. Such requirements include training for the shipper and operator, acceptance checks, and inspection prior to loading and after unloading this cargo. These changes will help reduce the frequency of improperly packaged shipments while helping workers to identify those that are incorrectly packaged or damaged. The updated standards also require that such packages receive dangerous goods labeling, thereby helping workers involved in the shipping process to recognize the potential hazards of the cargo. Additionally, the ICAO standards will ensure that crewmembers traveling with such shipments are notified of the cargo on the dangerous goods form, providing them with information that may become critical should an on-board emergency occur.

It's noteworthy to point-out that PHMSA was directly involved in the development of the improvements included in the 2013-2014 ICAO Technical Standards, and in fact, helped represent the U.S. in leading the conversation. It is inconsistent for PHMSA to promote high international standards while not requiring domestic shippers and carriers to comply. This incongruence would permit shippers and carriers to decide arbitrarily which standards to abide, resulting in a feasible scenario where two identical packages containing nine lithium batteries are transported on the same aircraft under different regulations. We also share ALPA's concerns that PHMSA's failure to harmonize the HMR would prevent the FAA from enforcing the ICAO standards for even international shipments.

We acknowledge that the improvements to the ICAO standards are not perfect and that they must be strengthened. For instance, the new provisions fail to restrict the total quantity of lithium batteries or their location on the aircraft, and they don't address batteries contained in or with equipment.

Still, we believe that the 2013-2014 ICAO Technical Instructions mitigate the risks of transporting lithium batteries and improve the safety of the aviation system as a result. Unfortunately, unless PHMSA harmonizes the HMR with the international regulations and requires domestic shippers and carriers to comply with the ICAO Technical Instructions, our aviation system will exist in a two-standard system where international carriers are held to higher safety standards than our domestic carriers. In the interest of the safety of our aviation system and the safety of those traveling with lithium batteries, we urge PHMSA to harmonize the HMR and require shippers and carriers to comply with the updated 2013-2014 ICAO Technical Instructions.

We appreciate the opportunity to provide additional comments on this proceeding and hope that PHMSA will take TTD and ALPA's views into consideration.

Sincerely,



Edward Wytkind  
President

# **TTD MEMBER UNIONS**

*The following labor organizations are members of and represented by the TTD:*

*Air Line Pilots Association (ALPA)*  
*Amalgamated Transit Union (ATU)*  
*American Federation of Government Employees (AFGE)*  
*American Federation of State, County and Municipal Employees (AFSCME)*  
*American Federation of Teachers (AFT)*  
*Association of Flight Attendants-CWA (AFA-CWA)*  
*American Train Dispatchers Association (ATDA)*  
*Brotherhood of Railroad Signalmen (BRS)*  
*Communications Workers of America (CWA)*  
*International Association of Fire Fighters (IAFF)*  
*International Association of Machinists and Aerospace Workers (IAM)*  
*International Brotherhood of Boilermakers, Iron Ship Builders,  
Blacksmiths, Forgers and Helpers (IBB)*  
*International Brotherhood of Electrical Workers (IBEW)*  
*International Longshoremen's Association (ILA)*  
*International Longshore and Warehouse Union (ILWU)*  
*International Organization of Masters, Mates & Pilots, ILA (MM&P)*  
*International Union of Operating Engineers (IUOE)*  
*Laborers' International Union of North America (LIUNA)*  
*Marine Engineers' Beneficial Association (MEBA)*  
*National Air Traffic Controllers Association (NATCA)*  
*National Association of Letter Carriers (NALC)*  
*National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)*  
*National Federation of Public and Private Employees (NFOPAPE)*  
*Office and Professional Employees International Union (OPEIU)*  
*Professional Aviation Safety Specialists (PASS)*  
*Sailors' Union of the Pacific (SUP)*  
*Sheet Metal Workers International Association (SMWIA)*  
*Transportation Communications International Union (TCU)*  
*Transport Workers Union of America (TWU)*  
*United Mine Workers of America (UMWA)*  
*United Steel, Paper and Forestry, Rubber, Manufacturing, Energy,  
Allied Industrial and Service Workers International Union (USW)*  
*United Transportation Union (UTU)*  
**UNITE HERE!**