



**COMMENTS OF THE
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO**

**BEFORE THE
DEPARTMENT OF HOMELAND SECURITY
TRANSPORTATION SECURITY ADMINISTRATION
RAIL TRANSPORTATION SECURITY; PROPOSED RULE
Docket No. TSA-2006-26514**

**DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
ENHANCING RAIL TRANSPORTATION SAFETY AND SECURITY FOR
HAZARDOUS MATERIALS SHIPMENTS; PROPOSED RULE
Docket No. RSPA-04-18730**

February 20, 2007

On behalf of the Transportation Trades Department, AFL-CIO (TTD), we are pleased to submit comments in response to the Notice of Proposed Rulemakings (NPRM) issued by the Transportation Security Administration (TSA) and the Pipeline and Hazardous Materials Safety Administration referenced above. TTD consists of 32 transportation unions in all modes of transportation and our 10 rail affiliates make-up our Rail Labor Division.¹ Along with our member unions, we have a long record of advocating for policies that will enhance the security and safety of our rail and mass transit systems. We appreciate the opportunity to share our views and concerns regarding these proposals.²

Clearly, we support the purpose of the NPRMs: to ensure that covered entities; freight rail carriers; intercity, commuter, and short-haul passenger train service providers; rail transit systems; and rail operations at certain facilities that ship or receive hazardous materials are operating in a manner that enhances security. Furthermore, there are certain aspects of the proposal that we support, and quite frankly, think are overdue. For example, we support the proposal to codify the scope of TSA's existing security inspection program, which requires regulated entities to allow homeland security officials to enter and inspect facilities and records

¹ A list of TTD affiliated unions is attached.

² It should be noted that TTD submitted comments to the TSA and PHMSA August 16, 2004 notice and request for comments entitled "Hazardous Materials; Enhancing Rail Transportation Security for Toxic Inhalation Hazardous Materials."

Transportation Trades Department, AFL-CIO

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Edward Wytkind, President • Michael A. Ingrao, Secretary-Treasurer

related to security. Additionally, we support the sentiment expressed in TSA's proposed requirement that regulated parties designate Rail Security Coordinators (RSCs). We also support the general proposition that rail carriers and other regulated entities need to exercise better control over (and monitor) the shipment of certain hazardous materials. With that said, there are certain security issues that have been ignored in both NPRMs and certain aspects of the proposed rule that raise serious concerns that need to be addressed.

We are extremely disappointed that these proposals do not include a requirement that all front-line rail and transit employees receive mandatory security training. More than five years after the September 11, 2001 attacks, our members still report that training programs are non-existent or insufficient to provide the type of information needed by employees to prevent and respond to a security threat.

Specifically, workers need to know what activities constitute a threat, what to do when suspicious behavior or activities are spotted and how to evacuate passengers and themselves in a terrorist emergency. Security experts have confirmed time and time again that a well-trained workforce is crucial to responding to security threats or incidents. Furthermore, TSA itself has testified that security training is important and should be done, but has also confirmed that it is not a requirement. This situation must change. The reality is that unless a uniform training program is made mandatory, employers will too often choose to by-pass this practice. Congress is moving in the direction of mandatory security training and eventually TSA will need to implement this requirement. But given the importance of this issue and the fact that so little progress has been made since 9/11, we hope that TSA will move to require training now and use its rulemaking authority to accomplish this objective.

We also find it troubling that TSA does not require covered entities to train the employees they designate as RSCs. We do not understand how TSA can require entities to have RSCs to spearhead and coordinate security efforts yet leave it to individual carriers to "provide its RSC with the information necessary to perform its job duties." Again, our experience is that leaving training decisions up to individual rail carriers will only result in inconsistent programs and some employees will not receive the training they need. If TSA is unwilling to require a specified training program for the one employee at a railroad tasked with heading security responsibilities, we are concerned that a broader training mandate for all front-line workers will not be pursued by the agency.

We would also point out that employees inspecting rail cars containing certain hazardous materials will now have to conduct security inspections which will include an examination for explosive devices and other signs of tampering. Despite this enhanced and potentially dangerous responsibility, TSA states only that it will "provide guidance to freight railroad carriers to train their employees on identifying IEDs and signs of tampering." Clearly, this training needs to be detailed by TSA and incorporated as a mandatory component of this program.

Proposed section 1580.105 requires covered entities to report significant security concerns to TSA. As a threshold matter, it is troubling that more than five years after 9/11, this common-sense practice is just now being proposed as a formal requirement. More specifically, we would note that front-line workers will be in the best position to identify many of the "potential threats

or significant security concerns” listed in the proposed regulation. For example, TSA is proposing entities report suspicious activity observed at or around rail cars or facilities; indications of tampering with rail cars; information relating to the possible surveillance of a train or facility; interference with train crew; or other incidents involving breaches of security. Again, without mandatory security training, this reporting will simply not be as robust or as complete as envisioned by TSA.

With the amount of emphasis placed on reporting security risks and to report possible breaches or suspicious behavior, we find it disingenuous that the proposals do not recognize or, as common sense dictates, address the culture and history of rail management discouraging employees from reporting safety and security concerns. Too often, employees have been threatened with retaliation or otherwise harassed when they come forward with legitimate concerns. Simply put, a worker should not have to choose between his or her job and doing the right thing in regards to security. For these reasons, TTD has pursued enhanced “whistleblower” protections in pending rail security bills and we will continue to insist on these basic protections.

Even from a regulatory standpoint, mechanisms can and must be established to ensure that employees are permitted to participate fully in reporting security concerns and that employer harassment will not be tolerated. As part of TSA’s enhanced inspection regime, inspectors and other agency officials should have the ability to talk directly with front-line workers about security concerns and any employer harassment they face. In addition, TSA should adopt regulations specifically prohibiting any type of employee harassment or intimidation with fines and penalties sufficient to discourage this dangerous conduct. Adequate whistleblower protections create an environment where well trained employees are ensured that their vigilance will not result in retribution from an employer. Without such guarantees, the full participation of vital front-line rail workers is questionable, thus rendering any final rule ineffective in increasing security.

The proposed regulations would require railroads to implement certain chain of custody requirements to ensure a positive and secure exchange of specified hazardous materials. As part of this requirement, proposed Section 1580.1079(d) would require entities to “ensure that the rail car is not left unattended at any time during the physical transfer of custody.” To comply with this new regulation, TSA states the following:

Delivering and receiving freight railroad carriers would ensure an employee or authorized representative of either of the railroad carriers attend to that rail car by being physically present and having an unobstructed view of the rail car prior to the delivering railroad carrier leaving the interchange point. **While TSA expects that the attending employee would be the train conductor or a security guard, TSA is not specifying that any particular category of individual needs to perform this job function** and is not specifying that a freight carrier would have to use a hazmat employee (as the term is used in 49 CFR 171.8) to perform this function. Moreover, to allow freight railroad carriers a maximum degree of flexibility in adopting and implementing procedures to meet the car attendance standard, this section does not specify a maximum number of rail cars permitted per attending employee ... (emphasis added).

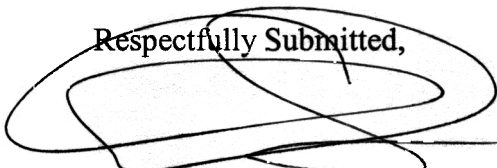
We disagree strongly with the notion or expectation that train conductors or any operating employees should be held responsible for this task. Conductors already have a plethora of safety and other responsibilities (in conjunction with their core job functions) and asking them to monitor a multi-car train is simply unrealistic. They are not trained as security personnel; approaching those that might seek to harm these shipments could be a dangerous exercise and is outside of their area of expertise. Furthermore, operating employees are governed by federal hours of service limitations and asking workers to stay with trains until interchange could force further violations of these rules. Fatigue is already a chronic and unaddressed problem in the rail industry and charging conductors with being security guards will only create additional problems.

We are also concerned that the proposed rule does not address the growing problem of so-called “dark territory” – track without signal systems that guide and govern train movements. Safety redundancies created by switch monitors, blocking sections of track, and broken rail detections are important aspects of a safe rail network that have obvious security benefits as well. Track and switches that are tampered with could more easily be detected with signaled systems that are widely available and relatively inexpensive to deploy. Unfortunately, rail carriers have not aggressively implemented this technology leaving wide areas of track vulnerable. Any final rule seeking to enhance security must require rail companies to meet this challenge and reduce the amount of non-signaled territory.

Finally, we want to raise the obvious point that the most robust security regulations will be meaningless unless fully enforced. It is well known that most of TSA’s resources have gone to aviation and too little attention has been paid to rail, mass transit and other segments of our transportation system. We are extremely concerned that TSA does not have sufficient personnel, particularly in the inspection ranks, to enforce these new regulations and to conduct proper oversight. We hope that TSA will more fully explain how it will meet its new responsibilities under this proposal as it moves to a final rule.

Thank you for the opportunity to share our views on this important matter.

Respectfully Submitted,

A large, stylized handwritten signature in black ink, appearing to be 'Edward Wytkind', is written over the signature line.

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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 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, Blacksmiths, Forgers and Helpers (IBB)
International Brotherhood of Electrical Workers (IBEW)
International Federation of Professional and Technical Engineers (IFPTE)
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 Airways Systems 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)