



The International Brotherhood of Teamsters

Testimony before the

**Committee on Transportation and Infrastructure's Subcommittee on
Railroads, Pipelines, and Hazardous Materials**

**On "Reauthorization of the Department of Transportation's Hazardous
Materials Safety Program"**

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Introduction

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The International Brotherhood of Teamsters (IBT) welcomes the opportunity to comment before the Committee on Transportation and Infrastructure's Subcommittee on Railroads, Pipelines, and Hazardous Materials concerning the "Reauthorization of the Department of Transportation's Hazardous Materials Safety Program". We recognize the need for comprehensive hazardous materials regulations that include language that ensures the strong enforcement of the rules, clearly defines regulatory jurisdiction, and provides for safety and security training of workers who are involved in hazardous materials transportation activities.

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The IBT represents approximately 300,000 workers in the United States who are involved in the transportation of hazardous materials including: tank truck drivers who transport bulk shipments of hazardous materials in quantities of up to 10,000 gallons; drivers and dock workers in the freight industry; drivers and warehouse workers in the hazardous waste transport industry; solid waste drivers; drivers and workers in the building and construction materials industry; airline pilots; and members who are employed in the public sector who are responsible for responding to traffic accidents. Many of these members must submit to comprehensive background checks as required by the Transportation Security Administration and the Homeland Security Administration.

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This International Union is very concerned about the health, safety, and security of our membership and that of the general public that shares the roads and highways with our members. Our comments will focus on the following areas:

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- Training for Hazardous Materials Workers
- OSHA Jurisdiction
- Hazardous Materials Endorsement / Criminal Background Checks
- Transportation of Lithium Batteries on Aircraft

Training for Hazardous Materials Employees

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It is critical that hazardous materials workers be provided with comprehensive worker safety and security training to enable these workers to protect themselves from the hazards that are inherent in handling, loading, and unloading hazardous materials. Therefore, the Union with the assistance of our training centers, and funding from several sources, developed a comprehensive hazardous materials / hazardous waste training program for our members and other transportation workers. This program is discussed in greater detail below. As we have worked with many of our members who are regularly involved in loading, unloading, handling, and transporting hazardous materials as part of their normal work responsibilities, it is clear that many employers are providing training that may technically comply with the minimal training requirements as set forth by the DOT. However, the training does not provide the workers with the necessary information and understanding to enable them to protect themselves, their coworkers, and the environment from the hazards associated with working with hazardous materials. Our members report that the training provided by their employers may consist simply of providing the workers with handout materials or a short video that they must review on their own time with no opportunity for questions and answers. In addition, the training may be generic so as to not address the site-specific needs of workers to avoid hazards in a particular workplace. We think that many employers, faced with a severe economic crisis are opting to

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either eliminate training programs or do the absolute minimum with respect to providing hazardous materials safety training. Management's position is that the workers should feel fortunate to have a job.

The IBT provides hazardous materials training to our members and other workers through the Safety and Health Department's Worker Training Program in conjunction with Teamster Training centers that are located throughout the United States. The target audience for training provided through this program includes truck drivers in tankhaul and freight operations, dock workers, construction workers, and warehouse workers. The training is funded by training grants that the IBT receives from the DOT Pipeline and Hazardous Materials Safety Administration (PHMSA), National Institute of Environmental Health Sciences (NIEHS), and from cent-per-hour contributions that are obtained through collective bargaining with employers that are signatory to joint labor – management training trusts.

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The DOT PHMSA awarded the IBT \$1.6M to conduct a Hazardous Materials Instructor Training (train-the-trainer) program for hazardous materials employees. This training is conducted by IBT Master Trainers (Mentors) who were familiarized with the program's goals and objectives, curricula, and administrative procedures prior to commencing the train-the-trainer sessions. To successfully complete the train - the trainer course, aspiring trainers must complete a pre-requisite 8 hour course to familiarize the participants with the hazardous materials regulations and requirements. The trainers must then successfully complete a 40 – hour Train-the-Trainer course that is classroom based and subsequently teach at least one 8 – hour basic course while being monitored and evaluated by Mentors and IBT Worker Training

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Program staff. The target audience for the 8 – hour basic course is typically rank-and-file co-workers of the new instructor, supervisors, or other management personnel, and the course is normally held at either a local union hall or at a site provided by a hazardous materials employer. To date, the DOT HMIT program has trained 211 trainers and 273 rank-and-file hazardous materials employees. We anticipate that 345 instructors and 814 rank-and-file hazardous materials employees will be trained by the end of the grant year. It should be noted that the rank-and-file employees who receive training in the program will do so as students of the new instructors who are completing their practical training prior to becoming a fully certified instructor.

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The response that the program has received from the new instructors and from employers who have either participated in the program or allowed their hourly hazmat employees to be trained in the program has been very positive. We also see an increasing demand for the training. The IBT is very pleased with the program and strongly recommend that additional funding be provided and that it be expanded to allow more training of rank-and-file hazardous materials employees.

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The NIEHS funded program is primarily focused on training workers who are responsible for remediating hazardous waste sites, transporting hazardous waste and hazardous materials to disposal sites, and responding to emergency releases of hazardous materials. This program includes a (4-hour hazardous materials transportation course) that is conducted as a module in a comprehensive 40-hour course that complies with the training requirements for the OSHA

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HAZWOPER Standard and DOT hazardous materials regulations. During the current grant year, the program has trained 484 workers in the 4-hour course.

OSHA Jurisdiction

The IBT is aware of previous industry efforts to eliminate OSHA authority to protect workers who load, unload, and handle hazardous materials as part of their job responsibilities. This is an extremely critical issue for the Union as we recommend that any such attempts by industry during this reauthorization process be rejected. OSHA is clearly best suited to protect the health and safety of workers who perform the previously mentioned work activities.

It should be noted that in 1994, Yellow Freight Systems (now Yellow-Roadway) our largest LTL carrier and employs 40,000 Teamster members was involved in a case that went to the Occupational Safety and Health Review Commission regarding hazardous materials related citations, that OSHA issued to the carrier. In that case, OSHA concluded that the carrier did not comply with the standards concerning emergency response procedures for emergency releases of hazardous materials, including those related to providing personal protective equipment and training to employees who were involved in the response to such incidents. The carrier argued that OSHA did not have jurisdiction due to 4(b)(1) provisions pursuant to the Occupational Safety and Health Act of 1970, concerning preemption. However, the Commission ruled that OSHA did, in fact, have the authority to enforce its regulations and standards to regulate safety and health in the trucking industry.

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This decision provided the Union with leverage and the carrier with the impetus to incorporate comprehensive language into the National Master Freight Agreement and other carriers that were signatory to the agreement concurred. Consequently, the IBT and the carriers that are signatory to the NMFA are bound by both regulatory requirements and contractual requirements to comply with the safety health provisions regarding hazardous materials as promulgated by both OSHA and the Department of Transportation.

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A similar situation occurred involving our members who are employed at United Parcel Service (UPS). There were several incidents involving drivers and package handlers who encountered unlabelled or improperly labeled packages and consequently experienced serious injuries. Although the quantities of hazardous materials being transported through the UPS system did not require placarding per DOT regulations, there was sufficient materials present to cause injuries to workers and in some instances, evacuation of work areas and facilities. OSHA cited the company for failure to comply with the hazardous materials handling and spill response requirements. The parties were able to resolve the citations by signing a settlement agreement that required UPS to implement a comprehensive hazardous materials handling and hazardous materials spill response procedures in their facilities. Again, the IBT worked with the employer to incorporate provisions within the settlement agreement into the National Master UPS Agreement that currently 210,000 members). This language, in addition to rules enforced by OSHA provides our members with needed protection during their hazardous materials loading, unloading, and transporting activities.

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Earlier this year, OSHA cited one of our employers for failure to provide training and personal protective equipment to transportation workers who were involved in the handling and shipping of packages that contained mercury. During the transport process packages were damaged and mercury spilled in the facility. Although OSHA determined that the hazardous materials workers involved experienced minimal exposures, and likely had no adverse health consequences, the incident could have been much worse and resulted in injuries or occupational illnesses to those exposed workers. Consequently, OSHA penalized the carrier for failure to comply with applicable rules governing training, personal protective equipment, and spill response.

Therefore, based on our experience working with OSHA concerning hazardous materials related issues, the agency is able to effectively protect transportation workers who are involved in the movement of hazardous materials. We would unequivocally recommend to the subcommittee that OSHA retain its jurisdiction to protect these workers, our members.

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Hazardous Materials Endorsement/Criminal History Records Check

Since the implementation of requirements under the USA Patriot Act (PL 107-56), all Teamster members who drive in the Less-than-Truckload (LTL) sector of the trucking industry have been required by their employers to obtain the hazardous materials endorsement to their Commercial Drivers License (CDL). This blanket requirement stems from the fact that neither our drivers, nor the employers, know from one day to the next whether or not they will be carrying hazmat in quantities requiring placarding as part of their load. While there have been proposals before Congress to specify a class of “security sensitive” hazardous materials that

would require a Transportation Worker Identification Card (TWIC) and alleviate the need for some current hazmat-endorsed drivers to undergo a criminal history record check, we do not believe that proposal would necessarily relieve our drivers in the LTL sector from the burdens of a criminal history record check. Our employers may require a TWIC simply because of the uncertainty of the load a driver may be hauling. Liability issues might also force employers to be extra cautious in deciding who does not have to possess a TWIC to carry certain hazmat loads. While the Teamsters Union would ordinarily welcome relief of burdensome background checks for its members, a two-tiered system of security for hauling hazardous materials also establishes a system of “haves” and “have nots” – those drivers possessing a TWIC card versus those without. The TWIC was designed to eventually cover all transportation workers so that a secure multimodal transportation system could be created. This proposal would seem to be defeating the purpose of the TWIC.

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Every effort should be made to reduce and or eliminate duplicative background checks. In the ports, some of our members have been burdened with obtaining multiple credentials to access individual ports, which have established their own security cards. Depending on the number of ports that a drayage driver services he could have up to 5 separate security cards, plus the TWIC. That adds up to several hundreds of dollars that the low-wage driver can't afford. And in the ports, until a sufficient number of card readers are in place, the TWIC is no better than a CDL to establish identity. CDLs are typically swapped with other drivers who don't have them, as are individual port security cards. These are typically waved in front of a security guard. The same may prove to be true with a TWIC for those drivers carrying security sensitive

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hazmat. Until readers are in place at the points of interchange of loads and drivers, a TWIC does not offer any greater level of security.

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For the most part, our members have not reported many problems with obtaining their hazardous materials endorsement. Initially, there were issues relating to access for fingerprinting, but for the most part, that has been resolved. We still remain concerned about disqualifying offenses being better defined to include only those that have a consistent and direct link to national security. We would encourage the appointment of a Task Force to review the list of crimes that disqualify individuals from obtaining employment and assess whether these crimes are accurate indicators of a terrorism security risk.

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In addition, we support legislation, the Fairness and Accuracy in Employment Background Checks Act, soon to be reintroduced in the 111th Congress, that requires the Attorney General to adopt procedures to ensure the accuracy and completeness of federal criminal background records exchanged for employment purposes. It is estimated that the FBI database used for these purposes is at best 50% accurate and/or complete. This legislation, in part, will require the Attorney General to ensure the maximum possible accuracy and completeness of records before releasing information to the employer; provide the individual an opportunity to receive a copy of the record before its release; investigate challenges and provide results; and notify the inquirer of a challenge and provide a copy of corrected records.

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Finally, the Teamsters Union is very concerned with any “similar” standards used to determine the equivalency of background checks conducted of Mexican drivers for transport of

hazardous materials into the United States. First, there is the issue of CDL equivalency between the two countries. The U.S. and Mexico signed a Memorandum of Understanding in the early 1990's recognizing the Mexican truck driver license as equivalent to the U.S. CDL. However, the Motor Carrier Safety Improvement Act of 2003 (MCSIA) changed the CDL program, making serious violations occurring in a CDL holder's personal vehicle— including DUIs – count against the CDL record. There is no similar treatment of a Mexican truck driver. Therefore, a Mexican driver, who under U.S. law could face suspension or revocation of his license, can continue to drive in the U.S. In addition, we still, to this day, do not know what physical or medical requirements are required of Mexican truck drivers. These CDL issues should be resolved along with the background check equivalency problem. Apparently, drivers in Mexico would undergo checks of their criminal history while in the United States, but not checks of their criminal history in Mexico. This makes no sense whatsoever. It in no way can be construed as undergoing “similar” background checks as required by statute. And until the Mexican government can ensure that it has documented that Mexican drivers have not committed offenses in Mexico that would disqualify them from hauling hazardous materials in the United States, those loads should be handed off to U.S. drivers who meet the background check requirements.

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Lithium Batteries

There is much concern about the hazards associated with transporting lithium batteries on aircraft. In 2005, the Department of Transportation promulgated a rule that prohibits the bulk shipment of lithium batteries in the cargo hold of passenger aircraft. The National Transportation Safety Board, in 2007 and 2008, issued a total of eight safety recommendations

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subsequent to a hazardous materials incident involving a cargo aircraft that was transporting bulk lithium batteries. The IBT agrees with the NTSB recommendations that include:

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- Transport primary lithium batteries in fire-resistant containers and in restricted quantities at any single location on the aircraft
- Require that cargo shipments of secondary lithium batteries be transported in crew-accessible locations where portable fire suppression systems can be used;
- When accidents or incidents occur, require aircraft operators to provide emergency responders with consolidated and specific information about hazardous materials on board an aircraft, including the proper shipping name, hazard class, quantity, number of packages, and location;
- Require aircraft operators to report to the PHMSA all incidents involving primary and secondary lithium batteries, including those contained in or packed with equipment, that occur either on board or during loading or unloading operations and retain the failed items for evaluation purposes;
- Analyze the causes of all thermal failures and fires involving secondary and primary lithium batteries and, based on this analysis, take appropriate action to mitigate any risks determined to be posed by transporting secondary and primary lithium batteries;
- Eliminate regulatory exemptions for the packaging, marking, and labeling of cargo shipments of small secondary lithium batteries;

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The IBT commends this Committee's concern about the safety and security of the travelling public and hazardous materials workers. As the amount of hazardous materials being transported in our Nation's transportation supply chain increases, so does the risk to our safety

and security. Enhancing the federal hazardous materials laws and reauthorizing the DOT's Hazardous Materials Safety Program are important steps that this Congress can take to protect hazardous materials workers, the general public, and the environment. We look forward to working with you on this important endeavor.